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Public Entities, Officers, and Employees

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Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; California Film Commission—film permits

Government Code §§ 14998.15, 14998.17 (repealed); §§ 14999.20, 14999.21, 14999.35 (new); §§ 14998.1, 14998.2 (amended).

AB 4680 (Statham); 1988 STAT. Ch. 955

Sponsor: Joe Bernay (State and Los Angeles Film Commission Member)

Support: California Film Commission; Burbank Studios; Consolidated Film Industries; Department of Transportation; California Highway Patrol; International Photographers Guild; Moonwalker Ultimate Productions; Studio Directory; San Jose Film and Video; GMT Studios; International Alliance of Theatrical Stage Employees; Association of Film Craftsman; Los Angeles County Filming Permit Office; Twentieth Century Fox; Screen Actors Guild

Existing law established the California Film Commission (Commission) to promote motion picture and television filming in California for the benefit of the state's economy.¹ The legislature, in enacting Chapter 955, recognized the need for uniformity and efficiency in the form of "one-stop permitting" in local regulation of the film industry.² Chapter 955 requires that the Commission, consulting with the motion picture industry and local and state government, develop and adopt a model process for granting film permits.³

1. CAL. GOV'T CODE § 14998.11.

2. *Id.* § 14998.1. Existing law provides that the Commission will develop and implement a Cooperative Motion Picture Marketing Plan, which will increase the marketing efforts of the Commission and offer state resources to local film commissions and local government liaisons to the film industry in order to market their locations to the motion picture industry. *Id.* § 15335.22(a)(1). The resources under the plan will also be used to recruit government participation in and development of local film commissions. *Id.* § 15335.22(a)(2).

3. *Id.* § 14999.20. The process shall contain, but not be limited to, the following: (1) A designated person to deal with industry whose responsibilities will include (a) attraction of motion picture production to the area, and (b) assistance in expediting the permit issuing process; (2) maximum time requirements to grant permits; (3) permits will be valid for the time period necessary to film a specific shot or sequence of shots, and minor changes to the permit can be accomplished by a rider, and major changes to the original permit requires a new permit; (4) coordination of multijurisdictional filming; (5) a suggested fee schedule for motion picture permits which is reasonably related to the cost of providing services to the

Under Chapter 955, each jurisdiction⁴ must adopt the model process for granting film permits by December 31, 1989, or inform the Commission in writing why it cannot or need not adopt the model process.⁵

KAB

motion picture production, including fire, police, and sanitation; (6) a uniform permit application-permit form. *Id.* § 14999.20(a)-(f). If the Commission has not adopted a model process for granting film permits by July 1, 1989, the existing uniform film permit application form, along with the existing model film ordinance will be used until the model process is adopted. *Id.* The uniform film permit application form must include all the following: (1) The name, address, and telephone number of the applicant or duly authorized representative, and, if available, of the director, first assistant director, unit production manager, or location manager; (2) the name and address of the individual or production company to whom the permit is to be issued; (3) the type of production or project; (4) the date, time, and location, including preparation and striking days; (5) a brief description of the proposed filming activity, including any other activity that would affect the use of public facilities in the area; (6) an estimate of the number of individuals in the cast and crew; (7) an estimate of the type and number of vehicles; (8) whether an applicant intends to use wild animals, chemicals, explosives or fire, or intends to engage in any other hazardous activity, a statement to that effect; (9) any additional information the Commission deems necessary. *Id.* § 14999.32(a)-(i). *See also, id.* §§ 14999.33(a),(b) (county, city, or city and county requiring a film permit should use the uniform film permit application form).

4. A jurisdiction may be a city, county, or city and county. *Id.* § 14999.31.

5. *Id.* § 14999.21(a).

Public Entities, Officers, and Employees; city or city and county charters

Election Code § 4080 (repealed); §§ 4080, 4094, 4095 (new); §§ 4081, 4082, 4085, 4086 (amended); Government Code §§ 34450, 34451, 34452, 34453, 34454, 34455, 34456, 34457, 34458, 34459, 34460, 34461, 34462 (repealed); §§ 34450, 34451, 34452, 34453, 34454, 34455, 34456, 34457, 34458, 34459, 34460, 34462 (new).

AB 4074 (Chacon); 1988 STAT. CH. 357

Under prior law, a city charter or city and county charter could only be amended by initiative.¹ Chapter 357 repeals those provisions and instead requires that amendments and other certain charter proposals be submitted to the voters.² The charter proposals required to be submitted are: (1) A charter proposed by an elected or appointed charter commission; (2) an amendment or repeal of a charter proposed by the governing body of a city or a city and county on its

1. 1976 Cal. Stat. ch. 248, sec. 3, at 512 (enacting CAL. ELEC. CODE § 4080).

2. CAL. ELEC. CODE § 4080(a) The proposals must be submitted at either a special election called for that purpose or at any established or regular election date provided there are at least eighty-eight days before the election. *Id.*

own motion; (3) an amendment or repeal of a city charter proposed by a petition signed by fifteen percent of the registered voters of the city;³ (4) an amendment or repeal of a city and county charter proposed by a petition signed by ten percent of the registered voters of the city and county; and (5) a recodification of the charter proposed by the governing body on its own motion, provided that the recodification does not substantially change the provisions of the charter.⁴

Existing law sets out the procedures for circulating a petition to amend a charter by initiative.⁵ Chapter 357 establishes additional requirements for this procedure⁶ and regulates the election on the proposal.⁷

Existing law allows any city or city and county to enact a charter for its own government.⁸ Chapter 357 allows a city or city and county to either amend or repeal a charter.⁹ Existing law further allows for the charter to be proposed by a charter commission.¹⁰ Chapter 357 requires that the commission be chosen by the voters of the city or city and county and provides that only registered voters are eligible as candidates.¹¹

Under existing law, the governing body of a city or city and county may propose a charter to be submitted for adoption by election.¹² Chapter 357 allows governing bodies to submit to the voters a proposal to amend or repeal a charter.¹³

JMS

3. The total number of registered voters is to be determined according to the county clerk's last official report of registration to the Secretary of State. *Id.* § 4080(c).

4. *Id.* § 4080(a). Proposals by the governing body and by petition of the voters may be submitted at the same election. *Id.* § 4080(b).

5. *Id.* §§ 4081-4093 (requirements for the circulation of petitions).

6. *Id.* §§ 4081 (proponents of amendments must comply with sections 4002.5 and 4002.7 of the Election Code); 4082 (petition signers must be registered voters of the city or city and county).

7. *Id.* § 4094 (regulations regarding the election). When the canvass of votes is complete, the city or city and county governing body must pass a resolution reciting the fact of the election. *Id.* § 4095. The clerk of the city or city and county must then submit the adopted measures to the Secretary of State. *Id.*

8. CAL. GOV'T CODE § 34450. *See also* CAL. ELEC. CODE § 4080(a) (an amendment or repeal of a charter proposal by a governing body must be submitted to the voters).

9. CAL. ELEC. CODE § 4080(a)(2).

10. CAL. GOV'T CODE § 34451.

11. *Id.*

12. *Id.* § 34458.

13. *Id.* (the proposal may be submitted at either a special election called for that purpose or at any established municipal election date or at any established or regular election date, provided there are at least eighty-eight days before the election). If the proposal passes, it will be deemed ratified, but will not take effect until accepted and filed by the Secretary of State. *Id.* § 34459. Three copies of the text of the ratified charter must be certified and authenticated by the chairperson and clerk of the governing body and attested by the city clerk. *Id.* § 34460. One copy must be filed with the county recorder and one in the city archives. *Id.* The third

copy must be submitted to the Secretary of State along with the following: (1) Certified copies of all publications and notices required of the city by these provisions or by the laws of the state in connection with the calling of an election; (2) certified copies of any arguments for or against the charter which were mailed to voters pursuant to section 5012 of the Elections Code; (3) a certified abstract of the vote at the election at which the charter was approved by the voters. *Id.* The charter must then be accepted and filed by the Secretary of State and published in the statutes; the courts must then take judicial notice. *Id.* § 34461. The commission must complete a proposed charter and submit it to the voters within two years of the date of election. *Id.* § 34462.

Public Entities, Officers and Employees; computer software

Government Code § 6254.9 (new).

AB 3265 (Cortese); 1988 STAT. Ch. 447

Chapter 447 states that computer software¹ developed by a state or local agency is not a public record requiring disclosure under the California Public Records Act.² Chapter 447 also provides that the agency may sell, lease, or license the software for commercial or non-commercial use.³ Chapter 447, however, does not affect the public status of information which is stored in a computer.⁴

KAB

1. CAL. GOV'T CODE § 6254.9(b) (computer software includes computer mapping systems, computer programs, and computer graphics systems).

2. *Id.* § 6254.9(a). See *id.* §§ 6251-6265 (California Public Records Act); § 6250 (the legislature declares that access to information concerning the conduct of a person's business is a fundamental and necessary right of every person in this state). See also, *Los Angeles Police Dep't v. Superior Court*, 65 Cal. App. 3d 661, 668, 135 Cal.Rptr. 575, 579 (1977) (Public Records Act was enacted with objective of increasing freedom of information); *Federal Freedom of Information Act*, 5 U.S.C.A. §§ 552-559 (West 1967). (giving the public the right of access to information held by federal agencies unless material was specifically exempted); Schaffer, *A Look at the California Records Act and its Exemptions*, 4 GOLDEN GATE U.L. REV. 203 (summary of the history of the California Public Records Act and an examination of its exemptions).

3. CAL. GOV'T CODE § 6254.9(a).

4. *Id.* § 6254.9(d). Public records stored in a computer shall be disclosed as required by the California Public Records Act. *Id.* See generally, Comment, *Access to Governmental Information in California*, 54 CALIF. L. REV. 1650 (1966) (analyzing the right of access to governmental information in California as formulated by judicial, legislative and executive interpretation).

Public Entities, Officers, and Employees; contracts for professional services

Government Code §§ 14130, 14131, 14132, 14133, 14134, 14135, 14136, 14524.1, 14524.2, 14533.6 (new); Streets and Highways Code § 167 (amended, repealed, and new); § 114 (amended). SB 516 (Bergeson); 1988 STAT. Ch. 9

Chapter 9 authorizes the Department of Transportation (Department) to contract for the services of engineers, architects, surveyors, planners, environmental specialists, and materials testing specialists.¹ Chapter 9 mandates guidelines for determining the appropriateness of these service contracts² and sets forth regulations for selecting the firm to perform the services.³

Chapter 9 establishes statewide Department participation goals of fifteen percent for private minority engineering, architect, land surveying, planning, environmental, and material testing business enterprises.⁴ Chapter 9 further establishes participation goals of five percent for women business enterprises.⁵

Chapter 9 requires the Department to develop a list of qualified minority and women business enterprises.⁶ Under Chapter 9, business enterprises must be notified sixty days prior to the deadline to submit their qualifications to the Department for evaluation.⁷ After the Department develops the initial list, Chapter 9 allows firms to submit

1. CAL. GOV'T CODE § 14131. Services contracted for must not cause the displacement of an employee of the department. *Id.* With the enactment of Chapter 9, the legislature finds and declares that service contracts are necessary in certain situations to enable the Department to capture and use all federal, state, local, and private funds in a timely manner. *Id.* § 14130(b). Chapter 9 mandates that an engineering or architectural firm providing design service for a Department project is not eligible to bid on or be awarded the construction contract for that project. *Id.* § 14135(a). Most Chapter 9 sections have a sunset provision with an effective date of January 1, 1993. *See, e.g. id.* §§ 14136, 14524.1(e), 14524.2(c); CAL. STS. & HIGH. CODE § 167.

2. CAL. GOV'T CODE § 14134. The Director of Transportation has sole responsibility to determine if the guidelines have been met. *Id.* § 14133(b).

3. *Id.* § 14132.

4. *Id.* § 14132(b). The percentage goal applies to the overall dollar amount expended during the year. *Id.* Chapter 9 defines a minority business enterprise as a business that is at least 51% owned by minorities, managed and controlled by one or more minorities, and located in the United States. *Id.* § 14533.6(a).

5. *Id.* § 14132(b). Chapter 9 defines a women business enterprise as a business that is at least 51% owned by women, managed and controlled by one or more women, and located in the United States. *Id.* § 14533.6(b). The participation goals cover private engineering, architect, land surveying, planning, environmental, and material testing business enterprises. *Id.* §§ 14131, 14132(b).

6. *Id.* § 14132(c).

7. *Id.* The qualifications for minority and women business enterprises are the same as those required for any other firm. *Id.*

qualifications for evaluation at any time, and requires the Department to add qualified business enterprises to the list immediately.⁸

COMMENT

Chapter 9 should meet constitutional standards applicable to affirmative action programs. Specifically, the constitutional standard for a minority business enterprise plan was outlined in *Department of General Services v. Superior Court of Sacramento*:⁹ (1) There is a demonstrated violation of a statutory or constitutional right; (2) there is a compelling governmental interest in furthering the plan; (3) the plan is necessary to serve that interest; and (4) the means used are the least destructive of the rights of nonminorities.¹⁰

The minority business plan discussed in *General Services* required the use of minority owned businesses.¹¹ This strict quota system was expressly condoned by the legislature¹² and may be the only exception to the otherwise universal adoption of affirmative action programs that impose goals favoring certain persons only when all persons are equally qualified.¹³ Chapter 9 does not impose a strict quota system but rather encourages the Department to meet certain goals¹⁴ and continues to require the Department to apply the same selection criteria to all qualified professionals.¹⁵ By imposing goals rather than quotas, Chapter 9 is a constitutionally permissible approach that will encourage the Department to favor minority and women business enterprises when the qualifications of two firms are equivalent in other respects.¹⁶

8. *Id.* § 14132(d).

9. 85 Cal. App. 3d 273, 147 Cal. Rptr. 422 (1978) (minority business enterprise plan requiring specific percentage of contract dollars to be awarded to minority owned businesses is subject to strict scrutiny).

10. *Department of Gen. Servs. v. Superior Court of Sacramento*, 85 Cal. App. 3d 273, 284-85, 147 Cal. Rptr. 422, 430 (1978).

11. *Id.* at 278, 147 Cal. Rptr. at 425.

12. *See* CAL. GOV'T CODE § 9124(c) (contracts pursuant to this section are exempt from provisions of the State Contract Act that require contracts to be awarded to the lowest responsible bidder). *See also Department of Gen. Servs.*, 85 Cal. App. 3d at 277, 147 Cal. Rptr. at 425 (State Contract Act requires that contracts be awarded to the lowest bidder without consideration of race, color, or national origin).

13. *See e.g. CAL. GOV'T CODE* § 19790 (each agency and department is to establish affirmative action goals). *See generally Dawn v. State Personnel Bd.*, 91 Cal. App. 3d 588, 595, 154 Cal. Rptr. 186, 190-91 (1979) (Paras, J., concurring) (California does not statutorily sanction rejection of an objectively better qualified person in favor of others less qualified). The term "affirmative action" may lead to confusion because the term may be used to describe a preference for certain persons when all persons are equally qualified or may be used to describe a preference for certain persons with lower qualifications when other persons are more highly qualified. *Id.* at 593 n.4, 154 Cal. Rptr. at 189 n.4 (Regan, J., majority).

14. CAL. GOV'T CODE §§ 14132(b), 14524.1(b)(4)-(5), 14524.1(c).

15. *Id.* §§ 14132(c), 14132(f)-(h).

16. *See Minnick v. Cal. Dep't of Corrections*, 95 Cal. App. 3d 506, 521, 157 Cal. Rptr.

Prior to 1986, the legislative goal for administrative affirmative action programs was preventative in nature and sought to avert underutilization of women and minority groups.¹⁷ The goals of Chapter 9 for women and minority business enterprises are not preventative but are instead consistent with the more recent 1986 legislative declaration that the equality of opportunity and the economic well being of the State cannot be fully realized without encouraging and developing the capacity of these enterprises.¹⁸

CWS

260, 268-69 (1979) (affirmative action goals do not place positions beyond the reach of male or nonminority employees and are constitutionally allowed in a situation where a quota might not be); *Dawn*, 91 Cal. App. 3d at 593, 154 Cal. Rptr. at 189 (there is no constitutional violation if a woman is promoted instead of a man if the two have equal qualifications). See generally *Johnson v. Transp. Agency*, 107 S.Ct. 1442, 1452 (1987) (where a manifest imbalance in the workforce exists, sex or race may be a factor to consider when promoting employees); *DeRonde v. Regents of the Univ. of Cal.*, 28 Cal. 3d 875, 890, 625 P.2d 220, 226-27, 172 Cal. Rptr. 677, 683-84 (1981) (minority status as one factor to be considered in evaluation of an applicant has been held to be presumed acceptable for university admissions criteria except when the factor is used to operate as a cover for a strict quota system).

17. CAL. GOV'T CODE § 19790. Underutilization is defined as having fewer persons of a particular group than would reasonably be expected by their availability. *Id.* § 19791(c). An affirmative action program that induces preferential treatment of minorities is not justified by a showing of racial imbalance or disproportionate representation alone; the imbalance must be attributable to past discrimination. *Hiatt v. City of Berkeley*, 130 Cal. App. 3d 298, 311, 181 Cal. Rptr. 661, 667 (1982).

18. CAL. PUB. UTIL. CODE § 8281(a).

Public Entities, Officers, and Employees; criminal convictions

Government Code § 1770 (amended); §§ 1770.1, 1770.2 (new).

AB 3111 (Jones); 1988 STAT. Ch. 283

Sponsor: Tulare County

Support: Attorney General's Office

Under existing law, a public office becomes vacant when the holder of the office is convicted¹ of certain enumerated crimes.² Chapter 283 clarifies when a conviction occurs by defining "trial court judgment" as a judgment by the trial court either sentencing the officer

1. CAL. GOV'T CODE § 1770(h) (defined as when the trial court judgment is entered).

2. *Id.* § 1770(h). Designated crimes include: bribery, perjury, malfeasance in office, or other high crime. CAL. CONST. art. VII § 8 (bribe to procure election or appointment, disqualification, exclusion from office and juries for certain crimes, regulations, corrupt practices). See also CAL. GOV'T CODE §§ 1021 (disqualification from holding office upon conviction of designated crimes); 3000 (forfeiture of office upon conviction of designated crimes).

or otherwise upholding and implementing the plea, verdict, or finding.³ Chapter 283 further specifies that a disqualification from office⁴ or a forfeiture of office⁵ upon conviction is neither stayed by the initiation of an appeal, nor set aside by the successful prosecution of an appeal from the conviction.⁶ The above changes do not constitute changes in, but are declaratory of, existing law.⁷

Additionally, upon the entry of a guilty plea, a plea of nolo contendere, or the rendering of a guilty verdict of a felony or designated crime,⁸ the officer will be suspended immediately from office.⁹ The suspended officer will not be entitled to receive any of the benefits of the office.¹⁰ The suspension will be lifted if the plea or verdict is set aside or otherwise nullified before the trial court judgment is entered.¹¹

KH

3. CAL. GOV'T CODE § 1770(h). Prior case law held that a conviction for purposes of exclusion from public office required more than a jury verdict or court finding of guilt, but consists of a jury verdict or court finding of guilt followed by a judgment upholding and implementing the verdict or finding. *See e.g.*, *People v. Overstreet*, 42 Cal. 3d 891, 900 n.7, 726 P.2d 1288, 1293 n.7, 231 Cal. Rptr. 213, 218 n.7 (1986) and *Helena Rubenstein International v. Younger*, 71 Cal. App. 3d 406, 421, 139 Cal. Rptr. 473, 482 (1977) (citing *McKannay v. Horton*, 151 Cal. 711, 718, 91 P 598, 601 (1907)). *See generally* 57 Op. Cal. Att'y Gen. 374, 375 (1974) (a conviction requires more than a jury verdict).

4. CAL. GOV'T CODE § 1021 (disqualification from office).

5. *Id.* §§ 3000 (forfeiture of office upon conviction of designated crimes), 1770(h) (events causing vacancy before expiration of term).

6. *Id.* § 1770.1. *See also* *McKannay*, 151 Cal. at 719-20, 91 P. at 601 (1907) (the pendency of the appeal does not affect the presumption of guilt which arises immediately upon the rendition of the verdict; and it would be strange indeed if a state which gives such weight to that presumption. . . should provide by law for an official continuance in an office the duties of which he cannot discharge); 57 Op. Cal. Att'y Gen. 374, 375 (1974) (an appeal following a conviction would not delay or stay the occurrence of the effect of such conviction). Chapter 283 prevents the use of an appeal as a mechanism for delay and prevents the receipt of benefits by a convicted official merely awaiting sentencing. *See* 57 Op. Cal. Att'y Gen. 374 (1974) (discussion of similar use of appeal prior to enactment of Chapter 283).

7. 1988 Cal. Stat. ch. 283, sec. 4, at (enacting CAL. GOV'T CODE § 1770.1 and amending *id.* § 1770).

8. *See supra* note 2.

9. CAL. GOV'T CODE § 1770.2. If the officer has not yet assumed office he will not be permitted to do so. *Id.*

10. *Id.* Benefits include, but are not limited to: The exercise of power of the office, the right to be seated within the office, and the compensation including benefits prescribed by the office. *Id.*

11. *Id.*

Public Entities, Officers, and Employers; Filipino employees

Government Code § 19799 (new); § 50087 (amended).

SB 1813 (Robbins); 1988 STAT. CH. 1129

Chapter 1129 specifies that any survey or statistical study of state

employees must classify separately persons of Filipino ancestry or origin.¹ Chapter 1129 also mandates that state affirmative action programs include allocations based on the percentage of Filipinos in local government in California.²

KAB

1. CAL. GOV'T CODE § 19799. The legislature declares that state personnel surveys are incorrectly classifying persons of Filipino ancestry as being Spanish or Asian, and that these persons should be categorized separately. 1988 Cal. Stat. ch. 1813 sec. 1, at ____.

2. 1988 Cal. Stat. ch. 1813, sec. 3, at ____ (amending 1978 Cal. Stat. ch. 845, sec. 1, at 2668). The legislature intended that any local government with more than 5% or 5000 Filipino residents separately identify this group when doing any population or statistical survey. *Id.*

Public Entities, Officers and Employee; land failure— immunity for warning

Government Code § 831.25 (amended).
AB 3694 (Harris); 1988 STAT. Ch. 1034

Existing law provides a public entity or public employee immunity from liability for emotional distress¹ or property damage, occurring off the public property, if the damage was caused by land failure² that resulted from a natural condition³ on unimproved public property.⁴ Under Chapter 1034 the immunity does not extend to a public entity or employee who had actual notice of probable damage that was likely to occur from a land failure and failed to warn the affected property owners.⁵ However, a public entity or employee is immune from liability for damage or injury that result from a warning.⁶

MEK

1. The plaintiff must suffer substantial physical injury. CAL. GOV'T CODE § 831.25(a). See 4 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts*, §§ 233, 538 (8th ed. 1974) (discussing intentional and negligent infliction of emotional distress).

2. CAL. GOV'T CODE § 831.25(c) (land failure is any movement of land, including a landslide, mudslide, creep, subsidence, or any other gradual or rapid movement of land).

3. A natural condition exists and property is unimproved even if minor improvements were made for the preservation or management of the property in an unimproved state, providing the minor improvements did not contribute to the land failure. *Id.* § 831.25(b).

4. *Id.* § 831.25(a). Given the limited funds available for the acquisition and improvement of property for recreational purposes, voluntary users of unimproved public property may be reasonably expected to assume the risk of injuries arising from the use as a part of the price paid for the benefits received. See *id.* § 831.2 (Legislative Committee Comment).

5. CAL. GOV'T CODE § 831.25(d) (requiring a reasonable warning).

6. *Id.* § 831.25(d).

Public Entities, Officers, and Employees; local agency deposits

Government Code §§ 53601, 53635, 53651.2 (amended).

AB 4089 (Johnston); 1988 STAT. CH. 491

SB 1883 (Beverly); 1988 STAT. CH. 294

(Effective July 7, 1988)

Sponsor: California League of Savings Institutions

Support: California Association of Joint Powers Authority

Existing law specifies the types of securities in which a local agency¹ may invest surplus money.² Chapter 491 requires such securities to have no more than five years remaining to maturity unless otherwise specified.³

Existing law also prohibits a local agency from investing in promissory notes that provide for negative amortization.⁴ Chapter 294 eliminates the prohibition against negative amortization.⁵ Chapter 294, however, requires local agencies to remove from the securities pool⁶ a first mortgage or first trust deed securing a promissory note that provides for negative amortization and replace it with an eligible security⁷ if the loan to value ratio exceeds eighty-five percent of the original appraised value of the security property because of the negative amortization.⁸ Also, promissory notes on which payment is more than sixty days past due are not securities eligible for investment under Chapter 294.⁹

Under existing law, any promissory note that was placed in a securities pool on or before December 31, 1988, and that remains in the pool continuously thereafter must comply with Government Code section 53651(m) and the administrative regulations in effect on December 31, 1986.¹⁰ With the enactment of Chapter 294, these

1. CAL. GOV'T CODE § 53630(a) (definition of local agency).

2. *Id.* §§ 53601, 53635.

3. CAL. GOV'T CODE §§ 53601, 53635.

4. 1986 Cal. Stat. ch. 56, sec. 86, at (amending Cal. Gov't Code § 53651.2).

5. CAL. GOV'T CODE § 53651.2(a)(1).

6. *Id.* § 53630(f) (definition of pooled securities).

7. An eligible security is a promissory note secured by a first mortgage and a first trust deed which complies with California Government Code section 53651.2. *Id.* §§ 53651(m), 53651.2(a)(1).

8. CAL. GOV'T CODE § 53651.2(a)(1). This provision applies only to promissory notes placed in a securities pool on or after January 1, 1987. *Id.* § 53651.2(a).

9. *Id.* § 53651.2(c)(1).

10. *Id.* § 53651.2(b).

promissory notes must be removed from the pool when payment on the note is more than sixty days past due.¹¹

JEP

11. *Id.* § 53651.2(b)(1). This subdivision is operative until January 1, 1994. *Id.* § 53651.2(b)(2).

Public Entities, Officers, and Employees; schools—asbestos

Government Code § 905.5 (new).
SB 2333 (Kopp); 1988 STAT. Ch. 1022

Under existing law, a public entity¹ is immune from liability arising from injuries except as otherwise provided by statute.² Chapter 1022 imposes civil liability on a school district³ for injuries⁴ arising out of the negligent exposure⁵ to asbestos contained in buildings used⁶ by a school district.⁷ However, Chapter 1022 does not create a statutory presumption of negligence⁸ and only applies to school districts.⁹

ASA

1. A public entity includes the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State. CAL. GOV'T. CODE § 811.2. *See* *Wright v Compton Unified School Dist.*, 46 Cal. App. 3d 177, 181, 120 Cal. Rptr. 115, 118 (1975) (a school district is a public entity).

2. CAL. GOV'T CODE § 815. *See* *Roberts v. State*, 39 Cal. App. 3d 844, 849, 114 Cal. Rptr. 518, 522 (1974) (the general rule is government immunity except for specific areas in which the statutes allow suits). *See generally* CAL. GOV'T. CODE §§ 810-996.6 (claims and actions against public entities and public employees).

3. CAL. GOV'T CODE § 905.5 (as well as officers, directors, and employees of the school district).

4. Injury includes disease, death, or economic loss. *Id.*

5. *See* *Ins. Co. North America v. Forty-Eight Insulations*, 633 F. 2d 1212, 1219 (6th Cir. 1980) (an exposure to asbestos occurs the moment the person first comes into contact with asbestos) *opn. on par. reh.* 657 F. 2d 814 (6th Cir. 1981); *California Union Ins. Co. v. Landmark Ins. Co.*, 145 Cal. App. 3d 462, 478, 193 Cal. Rptr. 461, 471 (1983) (adopting the exposure rule in *North America*).

6. CAL. GOV'T. CODE § 905.5 (owned, leased or otherwise used).

7. *Id.* The exposure must have occurred on or after January 1, 1989. *Id.*

8. Evidence Code section 669 (presumption of failure to exercise due care in specified circumstances) and Government Code section 815.6 (presumption of negligence if failure to comply with applicable statutory or regulatory provisions) do not apply to Chapter 1022. *Id.*

9. *Id.* Chapter 1022 does not apply to actions against any person who makes, sells, distributes, furnishes, or installs asbestos-containing materials; modify workers' compensation law; or change the rights of the school district, officers, directors, and employees to seek indemnification. *Id.*

Public Entities, Officers and Employees; subsidiaries and affiliates

Public Utilities Code §§ 587, 797 (new).
SB 1822 (Rosenthal); 1988 STAT. Ch. 759

Chapter 759 requires every electrical, gas, and telephone corporation¹ to submit to the Public Utilities Commission (Commission) an annual report, describing all significant transactions between the corporation and any of its subsidiaries, affiliates, and holding corporations.² Additionally, Chapter 759 directs the Commission to audit these transactions periodically.³

CHP

1. CAL. PUB. UTIL. CODE §§ 218 (definition of electrical corporation), 222 (definition of gas corporation), 234 (definition of telephone corporation).

2. CAL. PUB. UTIL. CODE § 587 The report must identify the nature of the transactions, including but not limited to, the basis upon which cost allocations and transfer pricing were established.

3. *Id.* § 797.

Public Entities, Officers and Employees; telephone corporation billing—information access services

Public Utilities Code § 2884 (amended); § 2884.2 (new).
SB 1844 (Russell); 1988 STAT. Ch. 1261*
SB 679 (Rosenthal); 1988 STAT. Ch. 201**

Chapter 201 directs the Public Utilities Commission (Commission) to establish a method for subscribers to block access to information telephone service¹ prefixes at their option, free of charge.² Chapter 201 also requires telephone corporations to refund any money previously paid for blocking access.³ Chapter 201 further provides that

* Chapter 1261 will be inoperative on July 1, 1991.

** Chapter 201 will be inoperative on June 1, 1992.

1. CAL. PUB. UTIL. CODE § 2884 (commonly referred to as "976 services", which include recorded commercial, informational, and public service messages, or interactive computer programs, all provided for an additional fee).

2. *Id.* § 2884(a).

3. *Id.* The Commission must create a method for telephone corporations to be reimbursed for the expense of providing the blocking option. *Id.* § 2884(b).

every telephone corporation that furnishes information-access telephone service must create a different, distinct telephone prefix for messages that convey harmful matter.⁴ Under Chapter 201, any information provider supplying a message containing harmful matter through a prefix that has not been designated for harmful matter is subject to civil penalties.⁵ The legislature intends Chapter 201 to provide the people of California access to telephone information services while allowing others to block access without incurring additional charges.⁶

Chapter 1261 removes from the jurisdiction of the commission a telephone corporation's billing and collection services furnished to an information provider whose live or recorded video text or audio information service contains harmful matter.⁷ Nevertheless, Chapter 1261 requires a telephone corporation to give thirty days advance notice to the Public Utilities Commission and the information provider before refusing to furnish billing and collection services to the information provider.⁸ Further, under Chapter 1261, an individual telephone corporation must offer the same terms and conditions for billing and collection agreements to every information provider.⁹ Chapter 1261 also provides that the Public Utilities Commission may, on complaint or on its own motion, reassert its jurisdiction and control upon the finding of specified circumstances.¹⁰

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4. *Id.* See CAL PENAL CODE § 313(a) (defines harmful matter as that which, applying statewide standards, taken as a whole, appeals predominantly to a shameful or morbid interest in sex, nudity or excretion, with no significant artistic, educational, literary, political, or scientific value to minors).

5. CAL. PUB. UTIL. CODE § 2884(b) (failure to comply with an order of the Commission may result in a penalty not less than \$500 and not more than \$2,000 for each offense).

6. See 1988 Cal. Stat. ch. 201, sec. 1, at _____. Additionally, the legislature declared the ability of parents of young children to block access to information services to be in California's interest. *Id.* It also intends Chapter 201 to balance the first amendment rights of telephone users and information providers. *Id.*

7. CAL. PUB. UTIL. CODE §§ 2884.2(a) (such practices are a matter of private contractual arrangement); 2884.2(d) (applies only to service furnished through a "976" prefix or a "900" access code telephone number).

8. *Id.* § 2884.2(g).

9. *Id.* § 2884.2(h) (copies of all contracts must be provided to the P.U.C., and to any other interested party upon request).

10. *Id.* § 2884.2(c) (circumstances include, but are not limited to anti-competition).

**Public Entities, Officers, and Employees; violent crimes
information center—missing persons**

Penal Code §§ 11114, 11114.1, 11114.2, 11114.3 (repealed); §§ 14200, 14201, 14202, 14203, 14204, 14205, 14206, 14207, 14208, 14209, 14210, 14213 (new).

SB 2282 (Presley); 1988 STAT. Ch 1456

Chapter 1456 repeals prior missing person reporting and investigating procedures.¹ Chapter 1456 directs the Attorney General to establish the Violent Crime Information Center to assist in the identification and apprehension of persons responsible for specific violent crimes and for the disappearance and exploitation of persons, particularly children and dependent adults.² Chapter 1456 further directs the Attorney General to establish within the center an automated online computer system to effect an immediate law enforcement response to reports of missing persons³ and to maintain active files⁴ of information concerning missing persons.⁵ Chapter 1456 also requires the Attorney General to establish and maintain a separate

1. 1988 Cal. Stat. ch. 1456 sec. 1, at ____ (repealing CAL. PENAL CODE §§ 11114, 11114.1, 11114.2, 11114.3).

2. CAL. PENAL CODE § 14200. The center must maintain certain programs including: (1) Developing violent offender profiles; (2) providing investigative information to local law enforcement agencies and county district attorneys on persons responsible for specific violent crimes and missing person cases; (3) providing physical description information and photographs to county district attorneys, non-profit missing person organizations, and schools; and (4) providing statistics on missing dependent adults and children, including family abductions, nonfamily abductions, voluntary missing and lost children or dependent adults. *Id.* See *id.* § 368(e) (definition of dependent adult).

3. Missing person includes a child who has been "taken, detained, concealed, enticed away, or wrongfully retained by a parent" from another person or agency who has a custody right to the child; or, any child who is "missing voluntarily or involuntarily, or under circumstances not conforming to his or her ordinary habits or behavior and who may be in need of assistance." CAL. PENAL CODE § 14213(a) (definition of missing person). See *id.* §§ 277 (a person with a right of custody may not maliciously take, detain, conceal, or entice away a child with the intent to deprive another of custody); 278 (describing punishment for the unlawful detention or concealment of a child).

4. The active files must be made available to law enforcement agencies which attempt to locate missing persons. CAL. PENAL CODE § 14201(b). The Attorney General must supply the agency with the names and personal descriptions of the missing persons. *Id.* This information is not to be released if the reporting agency requests in writing that the Attorney General not release it because it would impair a criminal investigation. *Id.*

5. *Id.* § 14201(a). The information on the missing person must be retrievable by any of the following: (1) the person's name, date of birth, and social security number; (2) whether a dental chart has been received, coded and entered into the National Crime Information Center Missing Person System by the Attorney General; (3) the person's physical description, including hair and eye color and body marks; (4) the person's known associates; (5) the person's last known location; (6) the name or assumed name of the abductor, if applicable; and (7) any other information the Attorney General deems appropriate. *Id.* § 14203(b)(1)-(9).

and confidential historic data base relating to missing children and dependent adults to be used only by the center for statistical and research purposes.⁶ Chapter 1456 additionally requires the Attorney General to establish within the center an investigative support unit⁷ and an automated violent crime method of operation system to facilitate the identification and apprehension of persons responsible for murder, kidnap, parental abduction, false imprisonment, or sexual assault.⁸

Existing law requires all local police and sheriffs' departments to accept missing person reports without delay and to give a higher priority to the handling of these reports than to reports involving property crimes.⁹ If the missing person is under the age of 12 or there is evidence that the person is "at risk",¹⁰ Chapter 1456 requires the department to immediately broadcast a "Be On the Look-Out" bulletin within its jurisdiction.¹¹

Chapter 1456 requires anyone who makes a missing person report to do so in person or by mail in a format acceptable to the Attorney General.¹² The report must contain a statement authorizing the release of dental or skeletal x-rays of the missing person and authorizing the release of a recent photograph of a missing person who is under

6. *Id.* § 14203(d) (the historic data base is to categorize missing children and dependent adult cases by type). These types are to include the following: Runaways, voluntary missing, lost, abduction involving movement of the victim in the commission of a crime or sexual exploitation of the victim, nonfamily abduction, family abduction, and any other category as determined by the Attorney General. *Id.* The data must also include the number of missing children and dependent adults in the state and the category of each case. *Id.* The center may supply information from the data base about specific cases to a local police department, sheriff's department, or district attorney only in connection with an investigation of a missing person case or sex crime. *Id.* § 14203(e). See *id.* § 11105.3 (definition of sex crime).

7. The investigative support unit is responsible for identifying violent felons and analyzing data on missing persons to alert local law enforcement agencies. *Id.* § 14202(a). The Attorney General must make available to the unit certain files organized by category of offender or victim. CAL. PENAL CODE § 14202(b).

8. *Id.* § 14202(a).

9. *Id.* § 14205(a) (incorporating 1987 Cal. Stat. ch. 705, sec. 1, at (amending Cal. Penal Code § 11114)). If a person makes a missing person report to the California Highway Patrol, the Highway Patrol must immediately advise that person of the name and telephone number of the police or sheriff's department having jurisdiction over the place where the person was last seen and of the police or sheriff's department having jurisdiction over the residence of the missing person. *Id.*

10. Evidence that the person is "at risk" includes, but is not limited to, evidence or indications of any of the following: (1) The person missing is the victim of a crime or foul play; (2) the person missing is in need of medical attention; (3) the person missing has no pattern of running away or disappearing; (4) the person missing may be the victim of parental abduction; (5) the person missing is mentally impaired. *Id.* § 14213(b)(1)-(5).

11. *Id.* § 14205(a).

12. *Id.* § 14206(a)(1).

18 years of age.¹³ If the person has not been found within 30 days of filing the report and no family or next of kin can be found, Chapter 1456 allows the law enforcement agency to execute a written declaration stating that the dental or skeletal x-rays are required for the exclusive purpose of furthering an investigation seeking the location of the missing person.¹⁴

If the person has not been found within 45 days, existing law requires the law enforcement agency conducting the investigation to confer with the coroner or medical examiner prior to preparing a missing person report.¹⁵ Chapter 1456 requires the law enforcement agency conducting the investigation to submit the report along with the x-rays and photograph to the Attorney General's office.¹⁶

When a person reported missing has been found, Chapter 1456 directs the law enforcement agency locating the missing person to report immediately the finding to the Attorney General.¹⁷ If the person reported missing is found alive or dead within 24 hours of the initial report and the local police or sheriff's department has reason to believe the person was abducted, the department is required to submit a report to the Violent Crime Information Center.¹⁸

Chapter 1456 requires the Department of Justice to continue to: (1) operate a toll-free telephone hotline;¹⁹ (2) produce posters of up to six missing children per month;²⁰ (3) provide local agencies with

13. *Id.* If after 30 days the person is still missing, the release form may be taken by a peace officer to the dentist or medical facility to secure the x-rays if others have failed to take action. *Id.*

14. *Id.* The written declaration, signed by the peace officer, is sufficient authority for the dentist or medical facility to release the missing person's x-rays. *Id.* Whenever the investigating law enforcement agency is authorized to execute a written declaration to obtain x-rays, the agency may obtain those x-rays when a person reported missing is under 18 years of age and the agency determines the disappearance involves evidence that the person is at risk. *Id.*

15. *Id.* § 14206(b) (incorporating 1987 Cal. Stat. ch. 705, sec. 1, at (amending Cal. Penal Code § 11114)). The coroner or medical examiner is required to cooperate. *Id.*

16. *Id.* Chapter 1456 does not prohibit a parent or guardian of a missing child from voluntarily submitting fingerprints and other documents to the law enforcement agency for their report. *Id.*

17. *Id.* § 14207(a). If the located person was under the age of 12 or there was evidence the child was at risk, the report indicating that the child is found must be made not later than 24 hours after the finding. *Id.* § 14207(b). A report must also be made to the law enforcement agency that made the initial missing person report. *Id.* The Attorney General's office must then notify the National Crime Information Center that the missing child has been found. *Id.*

18. *Id.* § 14207(c) (if the person is found before reported missing to the center, the information related to the incident must be submitted).

19. *Id.* § 14208(a) (incorporating 1986 Cal. Stat. ch. 249, sec. 10, at (enacting Cal. Penal Code § 11114)). The hotline is to receive information regarding missing children and dependent adults. *Id.*

20. *Id.* § 14208(b) (incorporating 1986 Cal. Stat. ch. 249, sec. 10, at (enacting Cal. Penal Code § 11114.1)).

a list of missing persons under the age of 18;²¹ and (4) include photos of missing children in a quarterly bulletin.²²

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21. *Id.* § 14209(a) (incorporating 1986 Cal. Stat. ch. 249, sec. 11, at (enacting Cal. Penal Code § 11114.2)).

22. *Id.* § 14209(c) (incorporating 1986 Cal. Stat. ch. 249, sec 11, at (enacting Cal. Penal Code § 11114.2)).

