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Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; community facilities districts

Business and Professions Code § 10176.5 (amended); Civil Code § 1102.6b (new); Government Code § 53347 (repealed); §§ 53312.7, 53330.3, 53345.8 (new); §§ 53313, 53313.5, 53316.2, 53317, 53318, 53321, 53326, 53330, 53335, 53340.2, 53341.5, 53346, 53356.7, 53359.5, 70139 (amended); Streets and Highway Code § 8807 (repealed); § 8840 (new).
SB 1464 (Mello); 1992 STAT. Ch. 772

Existing law authorizes the formation of community facilities districts¹ which may issue bonds² and levy special taxes³ to finance certain public facilities and services.⁴ Existing law also requires certain disclosures⁵ to be made upon the transfer of real estate.⁶

1. See CAL. GOV'T CODE § 53317(b) (West Supp. 1992) (defining community facility district as a legally constituted governmental entity established for the sole purpose of financing facilities and services); see also *id.* §§ 53318-53329 (West 1983 & Supp. 1992) (defining the procedures for the establishment of a community facilities district including the authorization of a written request for establishment of the district by the legislative body, a resolution of intention, reports on the establishment, a hearing, and an election of either land owners or by popular election).

2. See *id.* §§ 53345.3-53365.7 (West Supp. 1992) (authorizing the issuance of bonds).

3. See CAL. CONST. art. XIII A, § 3 (authorizing the levying of special taxes); CAL. GOV'T CODE §§ 53340.1-53344 (West Supp. 1992) (establishing the procedures for the levying of special taxes); *Nordlinger v. Hahn*, 112 S. Ct. 2326, 2336 (upholding the constitutionality of CAL. CONST. art. XIII A). See generally *Friends of the Library of Monterey Park v. City of Monterey*, 211 Cal. App. 3d 358, 375, 259 Cal. Rptr. 358, 372 (1989) (discussing the authorization of the levying of special taxes); *New Davidson Brick Co., Inc. v. County of Riverside*, 217 Cal. App. 3d 1146, 1149, 266 Cal. Rptr. 432, 434 (1990) (discussing attacks on the levying of special taxes pursuant to the Mello-Roos Community Facilities Act of 1982).

4. CAL. GOV'T CODE § 53318 (West Supp. 1992); see *id.* §§ 53313-53313.5 (West 1983 & Supp. 1992) (defining facilities and services which may be provided through the use of Community Facilities Districts).

5. See CAL. CIV. CODE §§ 1102-1102.15 (West Supp. 1992) (requiring disclosures to be made upon the transfer of residential property).

6. *Id.* § 1102.6 (West Supp. 1992); see *id.* § 1102.6a (West Supp. 1992) (defining the disclosure form).

Under Chapter 772, in the case of transfer of real property subject to a continuing lien⁷ securing the levy of special taxes pursuant to the Mello-Roos Community Facilities Act (Act),⁸ the seller must make a good faith effort to notify the prospective purchaser of the lien in the same manner as provided in a prescribed disclosure form.⁹

Existing law authorizes community facilities districts to finance designated public facilities and services.¹⁰ Chapter 772 provides that after January 1, 1994, a local agency¹¹ may initiate proceedings to establish a district only if it has first adopted local goals and specified policies concerning the use of the Act.¹² Chapter 772 further requires that the goals and policies adopted by any school district in this regard include a priority access to students residing in a community facilities district whose residents have paid special taxes financing the construction of school district facilities.¹³

Existing law permits the legislative bodies of two or more local agencies to enter into a joint community facilities agreement or a joint exercise of powers agreement.¹⁴ Chapter 772 mandates that no local agency which is a party to such an agreement shall have primary responsibility of forming a district unless that local agency

7. See BLACK'S LAW DICTIONARY 992 (6th ed. 1990) (defining lien as a claim, encumbrance, or charge on property for payment of some debt obligation or duty).

8. See CAL. GOV'T CODE §§ 53312-53365.7 (West 1983 & Supp. 1992) (codifying the Mello-Roos Community Facilities Act of 1982).

9. CAL. CIV. CODE § 1102.6b(b) (enacted by Chapter 772).

10. CAL. GOV'T CODE §§ 53313-53313.5 (West 1983 & Supp. 1992). The Mello-Roos Community Facilities Act of 1982 allows, but is not limited to, financing of police and fire protection services, recreational programs, maintenance of parks and highways, flood and storm protection services, elementary and secondary school sites and structures, libraries, child care facilities, and the acquisition, improvement, rehabilitation or maintenance of any real property for the purposes outlined above. *Id.*

11. See *id.* § 53317(f) (West 1983) (defining local agency).

12. *Id.* § 53312.7(a) (enacted by Chapter 772); see *id.* § 53312.7(a)(1)-(5) (enacted by Chapter 772) (specifying mandatory policies which must be adopted).

13. *Id.* § 53312.7(b) (enacted by Chapter 772); see Jeffrey A. Perlman, *State Panel Seeking Tougher Rules for Mello-Roos Districts*, L.A. TIMES, May 24, 1992, at A15 (discussing priority for taxpayers whose children attend new schools in Mello-Roos districts when their taxes have contributed to the construction of the new school).

14. CAL. GOV'T CODE § 53316.2(a) (amended by Chapter 772).

meets certain criteria.¹⁵ If a joint community facilities agreement or joint exercise of powers agreement has been adopted, Chapter 772 permits a community facilities district to finance facilities or services for an agency other than the agency which formed the community facilities district.¹⁶

Existing law requires that a resolution of intention to establish a community facilities district state the type or types of facilities and services proposed to be financed and that a special tax sufficient to pay for all the facilities and services be levied annually.¹⁷ Chapter 772 requires that those proposed facilities be described to allow a taxpayer within the district to understand what the funds of the district may be used to finance.¹⁸ Chapter 772 additionally limits financing to those public facilities and services described in the resolution.¹⁹

Existing law authorizes the issuance of bonds to finance facilities and services in accordance with the collection of special taxes.²⁰ Chapter 772 additionally provides that the legislative body may sell these bonds for these facilities and services only if it determines prior to the sale of the bonds that the value of the real property would be subject to the tax to pay debt service on the bonds exceeds by at least three times the principal amount of the bonds to be sold and the

15. *Id.* § 53316.2(e) (amended by Chapter 772). No local agency which is part of a joint powers agreement will have primary responsibility unless that local agency is one or more of the following: A city, a county, a city and county, an agency created pursuant to a joint powers agreement that is separate from the parties to the agreement, or an agency that is reasonably expected to have responsibility for providing facilities or services to be financed by a larger share of the proceeds of special taxes. *Id.* § 53316.2(e)(1)-(3) (amended by Chapter 772).

16. *Id.* § 53316.2(c) (amended by Chapter 772).

17. *Id.* § 53321(c),(d) (amended by Chapter 772).

18. *Id.* § 53321(c) (amended by Chapter 772).

19. *Id.* § 53330 (amended by Chapter 772).

20. *Id.* §§ 53345.3-53365.7 (West Supp. 1992); see *New Study Reveals Tax Cap Leads to Greater Use Bonds*, PUB. FIN./WASHINGTON WATCH, June 15, 1992, at 4 (discussing the increasing use of special assessment bonds to fund public facilities); Dennis Walters, *Mello-Roos Deals Will Have to Tow the Line, Public and Private Officials Say at Seminar*, THE BOND BUYER, May 8, 1992, at 5 (discussing the purported problems with Mello-Roos district bond issues). See generally Clayton P. Gillette, *Fiscal Federalism and the Use of Municipal Bond Proceeds*, 58 N.Y.U. L. REV. 1030, 1066 (1990) (discussing use of special assessment district funds).

principal amount of all other outstanding bonds that are secured by law.²¹

STL

Public Entities, Officers, and Employees; criminal history information of a prospective concessionaire

Civil Code § 1798.24a (new); Labor Code § 432.7 (amended); Penal Code § 11105.02 (new); § 13300 (amended).
SB 1769 (Watson); 1992 STAT. Ch. 1026

Under existing law, no agency¹ may disclose² any personal information³ in a way that reveals the identity of the person to whom

21. CAL. GOV'T CODE § 53345.8(a) (enacted by Chapter 772). If the legislative body does not make a determination that the value of real property subject to pay debt service is three times greater than the principal amount of the bonds to be sold it may issue bonds without such a finding if approved by a four-fifths vote of the legislative body. *Id.* § 53345.8(c) (enacted by Chapter 772); see *California*, THE BOND BUYER, May 19, 1992, at 28 (discussing Senate Bill 1464 and its strengthening of Mello-Roos bonds sold in California); *Mello-Roos Study Launched By California Underwriters*, CAL. PUB. FIN., June 1, 1992, at 4 (discussing a study by the California Public Securities Association to examine Mello-Roos financings); Debora Vrana, *California School Starts Foreclosure After Developers Miss Tax Payments*, THE BOND BUYER, June 29, 1992, at 1 (discussing the foreclosure of a community facilities district in the Temecula Valley Unified School District after certain property owners failed to remit more than \$1 million of a special tax payment).

1. See CAL. CIV. CODE § 1798.3(b) (West Supp. 1992) (defining agency).
2. See *id.* § 1798.3(c) (West Supp. 1992) (specifying that "disclose" means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, by electronic means, or any other means which would lead to the discovery of any person or entity).
3. See *id.* § 1798.3(a) (West Supp. 1992) (defining personal information as any information that is maintained by an agency that identifies or describes an individual, including but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history, or any statements made by, or attributed to, the individual); *Perkey v. Department Motor Vehicles*, 42 Cal. 3d 185, 193, 721 P.2d 50, 55, 228 Cal. Rptr. 169, 173 (1986) (finding that fingerprints fall within the category of information that identifies an individual because fingerprints are part of a person's physical description).

it pertains, except as specified.⁴ Chapter 1026 allows disclosure of personal information to certain entities,⁵ if a written request is made to a local law enforcement agency and the information is needed for screening⁶ a prospective concessionaire,⁷ or an affiliate⁸ or associate⁹ of a prospective concessionaire, in order to approve the prospective concessionaire's application for any beneficial interest in a concession, lease, or other property interest.¹⁰ However, Chapter 1026 specifies that any summary criminal history information¹¹ disclosed is limited to criminal convictions.¹²

4. CAL. CIV. CODE § 1798.24 (West Supp. 1992); *see id.* § 1798.24(a)-(v) (West Supp. 1992) (listing the specified exceptions for disclosure of personal information); 64 Cal. Op. Att'y Gen. 756, 756 (1981) (concluding that a report filed by a county welfare fraud investigator, regarding the failure of any individual to receive his food stamps by mail, was not open for public inspection); 64 Cal. Op. Att'y Gen. 575, 575 (1981) (holding that the Carpenter Funds Administrative Office was not prohibited from learning each carpenter's name, social security number, hourly wage, deductions from salary, trade, and total number of hours worked, where the carpenter was employed in a project financed by the California Housing Finance Agency).

5. *See* CAL. CIV. CODE § 1798.24a (enacted by Chapter 1026) (providing that information may be disclosed to any city, county, city and county, or district, or any officer or official thereof).

6. *See* CAL. LAB. CODE § 432.7(k)(2)(A) (amended by Chapter 1026) (defining "screening" as a written request for criminal history information made to a local law enforcement agency).

7. *See id.* § 432.7(k)(2)(B) (amended by Chapter 1026) (defining prospective concessionaire, in part, as any individual, general or limited partnership, corporation, trust, association, or other entity that is applying for a public agency's consent for acquisition of any beneficial ownership interest in any public agency's concession, lease, or other property right).

8. *See id.* § 432.7(k)(2)(C) (amended by Chapter 1026) (defining affiliate).

9. *See id.* § 432.7(k)(2)(D) (amended by Chapter 1026) (defining associate).

10. CAL. CIV. CODE § 1798.24a (enacted by Chapter 1026).

11. *See* CAL. PENAL CODE § 11105(a)(2)(i)-(ii) (West 1992) (defining "state summary criminal history information" as the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person); *id.* § 13300(a)(1) (amended by Chapter 1026) (defining "local summary criminal history information" as the master record of information compiled by any local criminal justice agency pertaining to the identification and criminal history of any person).

12. CAL. CIV. CODE § 1798.24a (enacted by Chapter 1026); *see* CAL. LAB. CODE § 432.7(a) (amended by Chapter 1026) (defining conviction); *Helena Rubenstein Int'l v. Younger*, 71 Cal. App. 3d 406, 421, 139 Cal. Rptr. 473, 483 (1977) (stating that the meaning of "convicted" is ambiguous and better defined as requiring the entry of judgment where a civil disability flows as a consequence of the "conviction"); *see also* *Pitman v. City of Oakland*, 197 Cal. App. 3d 1037, 1046, 243 Cal. Rptr. 306, 311 (1988) (holding that no legitimate public purpose or policy extends to a civil action for damages predicated upon an invasion of privacy to a person whose arrest resulted in a conviction).

Under existing law, no employer¹³ can ask an applicant for employment to disclose any nonconviction arrest or detention.¹⁴ Chapter 1026 provides that such information may be disclosed to any city, county, or district, or any officer or official thereof, in screening a prospective concessionaire, or the affiliates of a prospective concessionaire.¹⁵ Chapter 1026 further provides that such information may be used to disapprove the application.¹⁶

Existing law requires the Attorney General to furnish state summary criminal history information to specified entities when needed for fulfilling employment, certification or licensing duties.¹⁷ Chapter 1026 requires the Attorney General to furnish state summary criminal history information, pertaining to convictions, upon a

13. See CAL. LAB. CODE § 432.7(a) (amended by Chapter 1026) (stating that employers could be public agencies, private individuals, and corporations as employers).

14. *Id.* Employers are also barred from seeking information concerning referral to or participation in any pretrial or post-trial diversion program. *Id.* Employers may not utilize this information for the purposes of hiring, promotion, termination, or any apprenticeship training program. *Id.*; see *Rutherford v. Securities Exchange Comm'n.*, 842 F.2d 214, 216 (9th Cir. 1987) (holding that a request by the New York Stock Exchange for arrest and conviction information when verifying a securities industry registration form did not violate § 432.7 because there was no employer-employee relationship with the applicant).

15. CAL. LAB. CODE § 432.7(k)(1) (amended by Chapter 1026); cf. NEV. REV. STAT. ANN. § 179A.100 (3) (Michie Supp. 1991) (requiring dissemination, to a prospective employer, upon request, of records of criminal history concerning a prospective employee which reflect convictions only or pertain to an incident for which the prospective employee is currently within the criminal justice system). *But see* *White v. State*, 17 Cal. App. 3d 621, 631, 95 Cal. Rptr. 175, 182 (1971) (Friedman, J., dissenting in part and concurring in part) (expressing concern that an unwarranted record of conviction, even of arrest, may ruin an individual's reputation, livelihood, and life); Hon. Walter J. Karabian, *Record of Arrest: The Indelible Stain*, 3 PAC. L.J. 20, 21-24 (1972) (setting forth the negative effects of disseminating records where persons arrested were released, dismissed or acquitted).

16. CAL. LAB. CODE § 432.7(l)(1) (amended by Chapter 1026). *But see* *Gregory v. Litton Sys., Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970) (holding that excluding persons from employment because of numerous arrests, despite the absence of convictions, violates the Civil Rights Act of 1964 where this policy, regardless of intention, results in discrimination between applicants of different races and where a showing of business necessity cannot be made), *modified*, 472 F.2d 631 (9th Cir. 1972).

17. CAL. PENAL CODE § 11105(b)(1)-(14) (West 1992); see *Housing Auth. v. Van de Kamp*, 223 Cal. App. 3d 109, 116, 272 Cal. Rptr. 584, 589 (1990) (holding that certification and licensing as used in § 11105 is limited to the context of employment and occupational certification and licensing).

showing of a compelling need,¹⁸ to any city, county, city and county, or district, or any officer or official thereof, when needed to assist in the screening of a prospective concessionaire and their affiliates or associates.¹⁹

Existing law allows a local agency²⁰ to furnish local summary criminal information to specified entities,²¹ upon a showing of a compelling need, when that information is furnished to assist in fulfilling employment, certification, or licensing duties.²² Chapter 1026 allows the local information pertaining to criminal convictions to be furnished to any city, county, city and county, or district, or any officer or official thereof when screening a prospective concessionaire and any affiliate or associate thereof.²³

KAR

Public Entities, Officers, and Employees; military veteran's-- home and farm purchase loans

Military and Veterans Code § 987.57, 987.62 (amended).
SB 1736 (Rogers); 1992 STAT. Ch. 893

18. See CAL. PENAL CODE § 11105.02 (enacted by Chapter 1026) (deeming any local government's request for state summary criminal history information for purposes of screening a prospective concessionaire and their affiliates or associates a "compelling need"); *Central Valley Chapter of 7th Step Found. v. Younger*, 214 Cal. App. 3d 145, 151, 262 Cal. Rptr. 496, 499 (1989) (finding that the dissemination of arrest record information impinges on the fundamental privacy rights of Californians so that dissemination of such information should only occur when it serves a compelling state interest); *Loder v. Municipal Court*, 17 Cal. 3d 859, 864, 132 Cal. Rptr. 464, 468 (1976) (finding that a compelling interest for dissemination of arrest records was shown where the state's purpose was to protect the public from recidivist offenders).

19. CAL. PENAL CODE § 11105.02 (enacted by Chapter 1026). *But see* Richard P. Alexander & Kathleen Walz, *Arrest Record Expungement in California: The Polishing of Sterling*, 9 U.S.F.L. REV. 299, 304 (1974) (complaining that the range of individuals and agencies able to obtain confidential information under § 11105 is already broad and results in arrest records falling into unauthorized hands despite statutory restrictions).

20. See CAL. PENAL CODE § 13300(a)(3) (amended by Chapter 1026) (defining local agency).

21. See *id.* § 13300(c)(1)-(10) (amended by Chapter 1026) (listing the specified entities).

22. *Id.* § 13300(c) (amended by Chapter 1026).

23. *Id.* § 13300(c)(10) (amended by Chapter 1026).

Prior law required all applications for home and farm purchase loans to be filed with the Department of Veteran Affairs (Department)¹ within thirty years from the date of the applicant's discharge from the service.² Chapter 893 requires all applicants to file applications for home and farm purchase loans within the time limits required under applicable federal law and regulations.³

Existing law permits the Department to waive the occupancy requirement⁴ for up to four years.⁵ Chapter 893 eliminates the four-year limit, and requires that the property financed must be occupied by the owner and is not to become an investment, rental or business property.⁶

CPH

1. See CAL. MIL. & VET. CODE § 70 (West 1988) (defining the powers and duties of the Department of Veterans Affairs).

2. 1988 Cal. Stat. ch 330, sec. 2, at 918 (amending CAL. MIL. & VET. CODE § 987.57).

3. CAL. MIL. & VET. CODE § 987.57 (amended by Chapter 893); see 38 U.S.C. § 3702(a)(3) (1992) (providing that any unused housing loan entitlement belonging to a veteran will not expire until used). *But see* OR. CONST. art. XI-A, § 3(1)(e) (stating that in order for a veteran to qualify for a housing loan, the veteran must apply for the loan either within the 30 year period immediately following the date on which the person was released from active duty in the armed forces of the United States, or not later than January 31, 1985, whichever occurs last).

4. See CAL. MIL. & VET. CODE § 987.60(a)(2) (West Supp. 1992) (requiring the veteran receiving aid to agree that the veteran, or the veteran's immediate family will reside on the property within 60 days from the day of purchase by the Department and will continue to reside on the property until all payments due the Department have been paid or until the farm or home is sold).

5. *Id.* § 987.62 (amended by Chapter 893).

6. *Id.*; see *United States v. De Witt*, 265 F.2d 393, 400 (5th Cir. 1959) (granting summary judgment for the United States in a civil action for penalties under the False Claims Act against a real estate dealer for closing a home sale and loan, knowing that a non-veteran was to acquire the property); cf. MISS. CODE ANN. § 35-7-17(4) (1990) (stating that the Veterans Board will not consider applications for purchase that would provide the veteran with a second home, or provide funds to be used for investment purposes). See generally *Cal-Vet Home Loans: Serving Those Who Served For 70 years*, BUSINESS WIRE, Mar. 10, 1992, available in LEXIS, Nexus Library, Curmt File (providing the background and general requirements of the California Veteran home loan program).

Public Entities, Officers, and Employees; liability for police department's failure to respond to burglar alarms

Government Code § 845 (amended).
AB 2611 (Burton); 1992 STAT. Ch. 547

Existing law provides a general immunity to a public entity¹ or public employee² for failure to provide police protection or, if such service is provided, for failure to provide sufficient police protection.³ Chapter 547 creates an exception⁴ to this general immunity by declaring that a police department may not decline to

1. See CAL. GOV'T CODE § 811.2 (West 1980) (defining public entity).

2. See *id.* §§ 810.2, 811.4 (West 1980) (defining public employee).

3. *Id.* § 845 (amended by Chapter 547); see *Susman v. City of Los Angeles*, 269 Cal. App. 2d 803, 822, 75 Cal. Rptr. 240, 252 (1969) (holding that § 845 conferred immunity on the city of Los Angeles for damages resulting from inadequate police protection during the Watts riots); see also *Leger v. Stockton Unified Sch. Dist.*, 202 Cal. App. 3d 1448, 1463, 249 Cal. Rptr. 688, 696 (1988) (explaining that § 845 was designed to protect the political and budgetary decisions of policy-makers, who must determine whether to provide police officers or some similar department, from judicial review in tort litigation cases). In the absence of a statute there can be no liability for a public entity. CAL. GOV'T CODE § 815 (West 1980); cf. Robert Northness, Note, *Interpreting the Tort Liability of the State of Ohio: Reynolds v. State*, 48 OHIO ST. L.J. 577, 582 n.62 (1987) (enumerating the sovereign immunity laws of all 50 states).

4. See *Lopez v. Southern Cal. Rapid Transit Dist.*, 40 Cal. 3d 780, 793, 710 P.2d 907, 915, 221 Cal. Rptr. 840, 848 (1985) (holding that the immunity conferred by § 845 does not apply to common carriers where the driver failed to take other reasonable action, in lieu of providing police protection, to minimize the chance of harm to the plaintiff during an argument between the plaintiff and another passenger); *Carpenter v. City of Los Angeles*, 230 Cal. App. 3d 923, 931, 281 Cal. Rptr. 500, 504 (1991) (holding that the immunity conferred by § 845 does not apply where the police had a special relationship with the victim of a crime and failed to warn him of a known danger); *Baker v. City of Los Angeles*, 188 Cal. App. 3d 902, 909, 233 Cal. Rptr. 760, 764 (1986) (holding that a public entity cannot be liable, except where it can be established that a duty of care was owed); cf. *Williams v. State*, 34 Cal. 3d 18, 22, 664 P.2d 137, 139, 192 Cal. Rptr. 233, 235 (1983) (explaining that the questions of duty and breach, in tort cases against a government entity, are always preliminary to the question of immunity). Many authorities contend that ordinary tort principles should be used to determine liability for the failure to provide police protection. See generally, e.g., Lisa McCabe, Comment, *Police Officer's Duty to Rescue or Aid: Are They Only Good Samaritans?*, 72 CAL. L. REV. 661 (1984) (discussing *Williams v. State*, 34 Cal. 3d 18, 664 P.2d 137, 192 Cal. Rptr. 233 (1983), and concluding that police should be under an absolute duty to rescue and once undertaken, acts should be judged under a professional standard of care); Gerald P. Krause, Comment, *Municipal Liability: The Failure to Provide Adequate Police Protection-The Special Duty Doctrine Should Be Discarded*, 1984 WIS. L. REV. 499 (1984) (discussing the relationship of police activity and sovereign immunity and concluding that the special duty doctrine should be discarded in favor of ordinary tort principles to determine liability for failure to provide police protection).

respond to a request for service from either a burglar alarm system⁵ or alarm company⁶ referral, solely on the basis of the user's failure to obtain a required permit.⁷

BAB

Public Entities, Officers, and Employees; peace officers

Insurance Code § 488.5 (amended); Penal Code §§ 2039, 2045.4, 2048.4, 6050, 6105 (amended); Vehicle Code § 1808.4 (amended).

AB 3442 (Nolan); 1992 STAT. Ch. 1279

Existing law prohibits any insurer from increasing the premium on a private automobile insurance policy for peace officers,¹ members of the California Highway Patrol, or firefighters, due to an accident which occurs while the insureds are operating an emergency

5. See CAL. BUS. & PROF. CODE § 7590.1(n) (West Supp. 1992) (defining alarm systems); see also LOS ANGELES, CAL., MUN. CODE ch. 10, art. 3, div. 8, § 103.206(a)(2) (1992) (defining burglar alarm system).

6. See CAL. BUS. & PROF. CODE § 7590.2 (West Supp. 1992) (defining alarm company operator).

7. CAL. GOV'T CODE § 845 (amended by Chapter 547); see CAL. BUS. & PROF. CODE § 7592.8(c) (West Supp. 1992) (allowing cities and counties to enact ordinances governing false alarms); *id.* § 7592.8(d) (West Supp. 1992) (allowing cities and counties to enact ordinances requiring persons who own, rent, lease, or possess an alarm system to obtain a permit to operate an alarm system); LOS ANGELES, CAL., MUN. CODE ch. 10, art. 3, div. 8, § 103.206(b) (1992) (requiring a person to obtain a permit for the use of an alarm system). Chapter 547 was written in response to an incident in Southern California where a woman was beaten and raped in her garage while her home alarm system was activated, yet the local police disregarded the situation, allegedly because the woman had not obtained the necessary permit. SENATE COMM. ON JUDICIARY, 1991-92 REPORT ON AB 2611, at 2 (June 16, 1992). The police arrived only after a neighbor reported the situation. *Id.*; see *County of San Diego v. Department of Health Serv.*, 1 Cal. App. 4th 656, 661, 2 Cal. Rptr. 2d 256, 259 (1991) (holding that a committee analysis may be used to determine legislative intent); see also Barry Horstman, *Police Scrap Policy of Ignoring Silent Alarms*, L.A. TIMES, March 25, 1992, at A3 (reporting an incident where, allegedly because a homeowner failed to obtain the necessary permit, the police ignored her activated home alarm system while she was being beaten and raped in her garage).

1. See CAL. INS. CODE § 488.5(c)(1) (amended by Chapter 1279) (defining peace officer).

vehicle in the performance of their duties² during the hours of their employment.³ Chapter 1279 expands this provision to include federal officers and customs agents.⁴

Existing law provides that the home address of the Attorney General, the State Public Defender, a peace officer, and other specified persons,⁵ appearing in any record of the Department of Motor Vehicles, is confidential and may only be disclosed to certain government agencies.⁶ Existing law further provides that the home address must remain confidential for three years following termination of office or employment.⁷ Chapter 1279 provides that

2. See *Sawyer v. Humphries*, 587 A.2d 467, 472-73 (Md. Ct. App. 1991) (stating that even though a police officer may be said to be on duty all of the time, a police officer acts outside the scope of his employment where he acts for his own personal reasons and not in furtherance of his employer's law enforcement function); *Wolf v. Liberis*, 505 N.E. 2d 1202, 1206 (Ill. Ct. App. 1987) (stating that although policemen are on duty 24 hours a day, this fact does not mean that all acts taken by an off-duty police officer are deemed to be in the performance of his duties as a police officer).

3. CAL. INS. CODE § 488.5(a) (amended by Chapter 1279); cf. DEL. CODE ANN. tit. 18, § 2532 (1991); ME. REV. STAT. ANN. tit. 24-A, § 2174-B (West 1991) (prohibiting insurers from raising the premium for a personal insurance policy providing motor vehicle liability or collision insurance to a law enforcement officer on the basis of one or more accidents involving a motor vehicle operated by the officer if the accident occurred while the officer was operating a motor vehicle in the course and scope of employment).

4. CAL. INS. CODE § 488.5(b) (amended by Chapter 1279).

5. See CAL. VEH. CODE § 1808.4(a)(1)-(17) (amended by Chapter 1279) (specifying the persons to whom Vehicle Code § 1808.4 applies). This section applies to the following persons: (1) The Attorney General; (2) the State Public Defender; (3) members of the Legislature; (4) judges or court commissioners; (5) district attorneys; (6) public defenders; (7) attorneys employed by the Department of Justice, the office of the State Public Defender, or a county office of the district attorney or public defender; (8) nonsworn police dispatchers; (9) child abuse investigators or social workers, working in child protective services within a social services department; (10) active or retired police officers; (11) employees of the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority; (12) employees of a city police department or county sheriff's office; (13) nonsworn employees of federal, state, and local detention facilities who submit agency verification that, in the normal course of their employment, they control or supervise inmates or are required to have a prisoner in their care or custody; (14) nonsworn personnel in local juvenile halls, camps, ranches, and homes; (15) county counsels assigned to child abuse cases; (16) investigators employed by the Department of Justice, a county district attorney, or a county public defender; and (17) the spouse or children of persons listed in this section, regardless of the spouse's or child's place of residence. *Id.*

6. *Id.* § 1808.4(b) (amended by Chapter 1279). Chapter 1279 provides that the information may be disclosed to a court, a law enforcement agency, the State Board of Equalization, or any governmental agency to which, under any law, information is required to be furnished from records maintained by the department. *Id.*

7. *Id.* § 1808.4(c) (amended by Chapter 1279).

the home addresses of active or retired peace officers must, upon request, be withheld from public inspection permanently at the time the information would otherwise be opened.⁸

CPH

Public Entities, Officers, and Employees; prisoner death records

Government Code § 12525 (amended).
AB 2302 (Burton); 1992 STAT. Ch. 529

Under existing law, a law enforcement agency or the agency in charge of a local or state correctional facility is required to report in writing to the Attorney General¹ all facts in its possession regarding the death of any person in the custody of that agency or correctional facility within ten days after the death.² Prior law required that the report be available for inspection by any interested parties, except as to matters deemed privileged by the Attorney General.³ Chapter 529

8. *Id.*; see *Braun v. City of Taft*, 154 Cal. App. 3d 332, 340, 201 Cal. Rptr. 654, 658 (1984) (holding that the mere custody of a writing by a public agency does not make it a public record, but if a record is necessary or convenient to the discharge of a public officer's official duty it is a public record); *Johnson v. Winter*, 127 Cal. App. 3d 435, 440, 179 Cal. Rptr. 585, 589 (1982) (holding that the burden of demonstrating the need for confidentiality of all the materials in a file or document which is not expressly exempted rests on the agency claiming the privilege).

1. See CAL. CONST. art. 5, § 13 (providing the powers and duties of the Attorney General).
2. CAL. GOV'T CODE § 12525 (amended by Chapter 529); cf. FLA. STAT. ANN. § 406.11 (West 1988 & Supp. 1992) (requiring the medical examiner of the district in which the death of a prisoner occurred to determine the cause of death and make such examinations, investigations, and autopsies as requested by the state attorney); N.Y. COUNTY LAW § 671(b) (McKinney 1988) (requiring the coroner to investigate any death occurring to an inmate of a correctional facility, whether or not the death occurred inside such facility); TEX. PENAL CODE ANN. § 39.022 (West 1989) (providing that any person who is required to investigate and report the death of a prisoner and fails to do so is guilty of a misdemeanor).
3. 1961 Cal. Stat. ch. 2212, sec. 1, at 4558 (enacting CAL. GOV'T CODE § 12525).

makes these writings public records⁴ which are open to public inspection.⁵

CPH

Public Entities, Officers, and Employees; privacy

Public Utilities Code § 2894 (new).
SB 1450 (Russell); 1992 STAT. Ch. 263

Existing law prohibits a telephone¹ or telegraph corporation² from making specified information³ available to any other person⁴ or corporation⁵ without first obtaining the consent of a residential

4. See CAL. GOV'T CODE § 6252(d) (West Supp. 1992) (defining public records as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics).

5. *Id.* § 12525 (amended by Chapter 529); see *Braun v. City of Taft*, 154 Cal. App. 3d 332, 340, 201 Cal. Rptr. 654, 658 (1984) (holding that the mere custody of a writing by a public agency does not make it a public record, but if a record is kept by an officer because it is necessary or convenient to the discharge of his official duty it is a public record); *Johnson v. Winter*, 127 Cal. App. 3d 435, 440, 179 Cal. Rptr. 585, 589 (1982) (holding that the burden of demonstrating the need for confidentiality of all the materials in a file or document which is not expressly exempted rests on the agency claiming the privilege). Chapter 529 provides that nothing in this section permits the disclosure of confidential medical information that may have been submitted to the Attorney General's Office in conjunction with the report. CAL. GOV'T CODE § 12525 (amended by Chapter 529).

1. See CAL. PUB. UTIL. CODE § 234 (West Supp. 1992) (defining telephone corporation); *cf.* D.C. CODE ANN. § 43-217 (1992) (defining telephone corporation as every corporation, company, association, joint-stock company or association, partnership, or persons used in the conduct of the business of offering telephonic communication for hire, or which licenses, lets, or permits telephonic communication for hire); IDAHO CODE § 62-603(10) (1992) (defining telephone corporation as every corporation or person providing telecommunication services for compensation within the state of Idaho).

2. See CAL. PUB. UTIL. CODE § 236 (West 1975) (defining telegraph corporation).

3. See *id.* § 2891(a) (West Supp. 1992) (specifying the following information: (1) The subscriber's personal calling patterns; (2) the residential subscriber's credit or other personal financial information; (3) the services that the residential subscriber purchases from the corporation or an independent supplier of services using the corporation's lines; or (4) demographic information about individual residential subscribers).

4. See *id.* § 205 (West 1975) (defining person).

5. See *id.* § 204 (West 1975) (defining corporation).

subscriber.⁶ Additionally, under existing law, such a disclosure provides grounds for civil action⁷ against the corporation.⁸ Under Chapter 263, the disclosure of any information by a radiotelephone utility,⁹ in compliance¹⁰ with a state or federal court warrant¹¹ or order,¹² or administrative subpoena,¹³ issued as specified,¹⁴ is a complete defense against any civil action brought pursuant to existing law.¹⁵

DLR

6. *Id.* § 2891(a) (West Supp. 1992); *see id.* § 2891(d) (West Supp. 1992) (providing the following exceptions to the restrictions on availability of information: (1) Information provided by the residential subscriber for the corporation's directory; (2) information customarily provided by the corporation through directory assistance services; (3) postal zip code information; (4) information provided under supervision of the commission by the telephone corporation to a collection agency only for the collection of unpaid debts; (5) information given to an emergency service agency responding to a 911 call or any other response to an imminent threat to life or property; (6) information provided to a law enforcement agency; (7) information required by the commission; (8) information transmitted between telephone and telegraph corporations; and (9) information required by the rules and orders of the commission or the Federal Communications Commission to be provided by the corporation); *cf.* OR. REV. STAT. § 401.765(3) (1991) (providing that any telecommunications utility that in good faith provides confidential information to emergency services providers will not be subjected to civil action for damages).

7. *See* CAL. CIV. PROC. CODE § 30 (West 1982 & Supp. 1992) (defining civil action).

8. CAL. PUB. UTIL. CODE § 2891(e) (West Supp. 1992).

9. *See* 47 C.F.R. § 22.2 (1991) (defining paging services and public mobile services); ASSEMBLY SUBCOMMITTEE ON THE ADMINISTRATION OF JUSTICE, COMMITTEE ANALYSIS OF SB 1450, at 1 (June 9, 1992) (defining radiotelephone utility as a provider of paging and mobile telephone services). *See generally* Robert W. Kastenmeier et al., *Communications Privacy: A Legislative Perspective*, 1989 Wis. L. REV. 715, 722-730 (discussing communication privacy in regards to cellular phones and paging devices).

10. *See* CAL. PUB. UTIL. CODE § 2894 (enacted by Chapter 263) (requiring good faith compliance); *People v. Lonergan*, 219 Cal. App. 3d 82, 90, 267 Cal. Rptr. 887, 892 (1990) (stating that good faith is that state of mind illustrating honesty of purpose, freedom from intention to defraud, or being faithful to one's duty or obligation).

11. *See* CAL. PENAL CODE § 1523 (West 1982) (defining search warrant).

12. *See* CAL. CIV. PROC. CODE § 1003 (West 1980 & Supp. 1992) (defining order).

13. *See* CAL. GOV'T CODE § 11510 (West 1992) (governing the issuance of an administrative subpoena).

14. *See* CAL. PUB. UTIL. CODE § 2894 (enacted by Chapter 263) (specifying the warrant or subpoena to be issued at the request of a law enforcement official or other governmental agency for law enforcement purposes).

15. *Id.* § 2894 (enacted by Chapter 263); *see* SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 1450, at 3 (May 5, 1992) (showing the possible problems of easing the restrictions on the dissemination of telephone information).

Public Entities, Officers and Employees; prospective application of *Rider v. County of San Diego*

Public Utilities Code § 99550 (new).
SB 1845 (Kopp); 1992 STAT. Ch. 1233

Existing law authorizes cities, counties, and special districts¹ to impose retail transactions taxes and use taxes² for transportation purposes and requires that special taxes³ imposed by these jurisdictions be approved by a two-thirds vote⁴ of the electors.⁵ The

1. See CAL. CONST. art. XIII A, § 4 (stating that cities, counties and special districts, by a two-thirds vote of the qualified electors of that district, may impose special taxes on such district, except ad valorem taxes on real property or transaction taxes or sales taxes on the sale of real property within such city, county or special district); *Los Angeles County Transp. Comm'n. v. Richmond*, 31 Cal. 3d 197, 201, 643 P.2d 941, 945, 182 Cal. Rptr. 324, 328 (1982) (defining special district, as used in Article XIII A, § 4 of the California Constitution, as a district which has authority to levy a tax on real property).

2. See CAL. REV. & TAX. CODE § 6004 (West 1987) (defining use tax as a tax imposed under §§ 6201 through 6249 of the California Revenue and Taxation Code).

3. See *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 57, 648 P.2d 935, 940, 184 Cal. Rptr. 713, 718 (1982) (defining special tax as a tax levied for a special purpose rather than being deposited in a general fund utilized for general governmental purposes). *But see Richmond*, 31 Cal. 3d at 216, 643 P.2d at 953, 182 Cal. Rptr. at 336 (Richardson, J., dissenting) (stating that local agencies could circumvent Article XIII A, § 4 of the California Constitution by classifying taxes as special taxes by depositing the receipts in a general fund and making them subject to the specific purpose for which motivated the tax). Subsequently, the California Supreme Court redefined special tax as a tax levied to fund a specific governmental project or program. *Rider v. County of San Diego*, 1 Cal. 4th 1, 15, 820 P.2d 1000, 1009, 2 Cal. Rptr. 490, 499 (1991).

4. See *Richmond*, 31 Cal. 3d at 205, 643 P.2d at 445, 182 Cal. Rptr. at 328 (looking upon the two-thirds voting scheme as being fundamentally undemocratic in nature because it requires an extraordinary majority). Accordingly, the language of § 4 was strictly interpreted and ambiguities resolved in favor of permitting voters in cities and special districts to pass special taxes by a majority rather than a two-thirds vote. *Id.*

5. CAL. CONST. art. XIII A, § 4 (enacted by Proposition 13). The apparent purpose in enacting Proposition 13 was to restrict the ability of local governments to impose new taxes in order to replace the property tax revenue losses which would occur. *Richmond*, 31 Cal. 3d at 205-06, 643 P.2d at 946, 182 Cal. Rptr. at 329. Proposition 13 has been subjected to multiple constitutional challenges. See, e.g., *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978). The court in *Amador* held that Proposition 13 was a constitutional amendment rather than an impermissible "revision," and therefore, appropriate for the initiative procedure. *Id.* at 229, 583 P.2d at 1289, 149 Cal. Rptr. at 247. Second, the court held that Proposition 13 did not breach the single subject condition of the initiative process. *Id.* at 232, 583 P.2d at 1292, 149 Cal. Rptr. at 250. Third, the court held that Proposition 13 did not deny equal protection of the laws required by the Fourteenth Amendment of the United States Constitution. *Id.* at 237, 583 P.2d at 1294-95, 149 Cal. Rptr. at 252-53. Fourth, the court held that Proposition 13 did not impermissibly encroach upon the right to travel. *Id.* at 238, 583 P.2d at 1295, 149 Cal. Rptr. at

California Supreme Court, in *Rider v. County of San Diego*,⁶ interpreted a special district,⁷ as used in the California Constitution,⁸ to be any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13.⁹ In addition, the *Rider* decision reinterpreted a

253. Fifth, the court held that plaintiffs did not have standing to assert interference with contractual obligations. *Id.* at 242, 583 P.2d at 1298, 149 Cal. Rptr. at 256. Sixth, the court held that Proposition 13 did not abrogate the title and ballot summary requirements for initiatives. *Id.* at 243, 583 P.2d at 1298, 149 Cal. Rptr. at 256. Lastly, the court held that Proposition 13 was not void for vagueness. *Id.* at 247, 583 P.2d at 1301, 149 Cal. Rptr. at 259. The United States Supreme Court has also upheld the constitutionality of Proposition 13 stating that a state can structure its tax system to discourage rapid turnover of ownership of homes and businesses, and may conclude that a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner. *Nordlinger v. Hahn*, 112 S. Ct. 2326, 2333 (1992); see Julie Koyama, Comment, *Financing Local Government in the Post-Proposition 13 Era: The Use and Effectiveness of Nontaxing Revenue Sources*, 22 PAC. L.J. 1333 (1991) (discussing the impact of Proposition 13 and the effect of the *Richmond* decision on the taxing authority of local jurisdictions); Joseph T. Henke & Miles A. Woodlief, *The Effect of Proposition 13 Court Decisions on California Local Government Revenue Sources*, 22 U.S.F. L. REV. 251 (1988) (examining the role of courts in interpreting far reaching popular initiatives, how California courts have defined the revenue sources available to local jurisdictions, and the weaknesses and constitutional constraints on the initiative process); Arnold P. Schuster & Philip R. Recht, *Tax Allocation Bonds in California After Proposition 13*, 14 PAC. L.J. 159, 162-63 (1983) (asserting that California localities may not have the taxing power under Article XIII A, § 4 to back general obligation bonds because of the two-thirds vote requirement, and describing how localities after *Richmond* and *Farrell* could establish non-special districts and non-special taxes to circumvent the two-thirds requirement).

6. 1 Cal. 4th 1, 320 P.2d 1000, 2 Cal. Rptr. 2d 490 (1991).

7. The *Richmond* court construed § 4 in accordance with the natural and ordinary meaning of its words, disregarding any literal language which may lead to an absurd result, and in order to fulfill the intent of the framers, the language was given its literal, practical, common-sense construction in order to meet changed conditions and the growing needs of the people. *Richmond*, at 202-03, 643 P.2d at 944, 182 Cal. Rptr. at 327. Section 4 was construed strictly because the two thirds majority requirement is perceived as being undemocratic. *Id.* at 205, 643 P.2d at 445, 182 Cal. Rptr. at 328. The *Richmond* court stated that they would not assume that the Legislature would try to circumvent Article XIII A, § 4 by reorganizing special districts and removing their taxing power in order to pass taxes by majority vote. *Richmond*, 31 Cal. 3d at 208, 648 P.2d at 947, 182 Cal. Rptr. at 330. The majority affirmed this premise by stating that it was not the purpose in this case because the Los Angeles County Transportation Commission predated Proposition 13 by two years. *Id.* The majority found that if the Legislature did act to avoid the goals of Article XIII A by such a device, the problem could be dealt with when it occurs. *Id.* In his dissent, Justice Richardson stated that the government would instinctively pour through the special district opening and create similar revenue-generating entities. *Id.* at 213, 643 P.2d at 950, 182 Cal. Rptr. at 333 (Richardson, J., dissenting).

8. See CAL. CONST. art. XIII A, § 4 (enacted by Proposition 13) (empowering special districts to assess retail transaction taxes and use taxes upon a two-thirds vote by the electorate).

9. *Rider*, 1 Cal. 4th at 11, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496. The *Rider* court did not perceive its ruling as overruling *Richmond*, but characterized the holding in *Richmond* as applying only to local districts which, prior to the passage of Proposition 13, did not have authority to levy property taxes, and then declined to extend such ruling to local districts created after the enactment

special tax, as used in the California Constitution,¹⁰ to mean a tax levied to fund a specific governmental project or program.¹¹ Chapter 1233 states that *Rider* must not be applicable to, or control, any action or proceeding wherein the validity of a retail transactions and use tax is contested, questioned, or denied if the ordinance was adopted by a transportation agency and approved prior to December 12, 1991, the date of the *Rider* decision.¹²

COMMENT

Chapter 1233 applies the rulings in *Rider v. County of San Diego*,¹³ as they pertain to transportation agencies, prospectively only.¹⁴ The practical effect of *Rider* is that if there is sufficient evidence of intentional circumvention of Proposition 13, an agency will be deemed a special district and will be able to finance local municipal functions only by a two-thirds majority rather than a simple majority.¹⁵ Enactment of Chapter 1233 was necessary

of Proposition 13. *Id.* at 10, 820 P.2d at 1005, 2 Cal. Rptr. 2d at 495; see CAL. PUB. UTIL. CODE § 99550 (enacted by Chapter 1233) (defining transportation agency as any agency, authority, district, commission, or other public entity organized under provisions of the Public Utilities Code and authorized to impose a retail transactions and use tax).

10. CAL. CONST. art. XIII A, § 4.

11. *Rider*, 1 Cal. 4th at 15, 820 P.2d at 1009, 2 Cal. Rptr. at 499. Accordingly, every tax levied by a special purpose district or agency would be deemed a special tax thereby requiring the two-thirds majority. *Id.*

12. CAL. PUB. UTIL. CODE § 99550 (enacted by Chapter 1233).

13. 1 Cal. 4th 1, 320 P.2d 1000, 2 Cal. Rptr. 2d 490 (1991).

14. CAL. PUB. UTIL. CODE § 99550 (enacted by Chapter 1233). The California Supreme Court in *Los Angeles County Transportation Commission v. Richmond* held that a tax implemented by the Commission and passed by a majority vote of the electorate was not subject to Article XIII A of the California Constitution because the Commission did not have authority to levy property taxes. *Richmond*, 31 Cal. 3d at 201, 643 P.2d at 945, 182 Cal. Rptr. at 328. *But see Rider*, 1 Cal. 4th at 11, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496 (defining special district as including any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restriction of Proposition 13).

15. *Rider*, 1 Cal. 4th at 11, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496. Intent to evade Proposition 13 is inferred whenever the plaintiff has proved the new tax agency is essentially controlled by one or more cities or counties that otherwise would have had to comply with the supermajority provision of Article XIII, § 4 of the California Constitution. *Id.* In determining whether such control exists the court is to consider the presence or absence of the following: (1) Substantial municipal control over agency operations, revenues or expenditures; (2) municipal ownership or control over agency property or facilities; (3) coterminous physical boundaries; (4) common or overlapping governing boards; (5) municipal involvement in the creation or formation of the agency;

because the *Rider* court declined to comment on the possibility of giving its decision prospective effect only.¹⁶ A retroactive application of the *Rider* ruling requiring a two-thirds majority vote to authorize funds would jeopardize many transportation programs throughout the state because they rely on uninterrupted funding.¹⁷

To illustrate, over the past fifteen years more than twenty transportation authorities have been established, \$1.5 billion in tax bonds backed by sales receipts are currently outstanding, and \$6 billion is expected to be raised by these tax dollars with billions of dollars more to come in future years.¹⁸ Had the *Rider* decision been applied retroactively, it would have been difficult for transportation agencies to collect or continue to collect the taxes necessary to meet their obligations and to remain solvent because millions of dollars in bonds issued by agencies would have been rendered worthless and millions of dollars in state and federal matching funds lost.¹⁹ Furthermore, enactment of Chapter 1233 was necessary to protect innocent purchasers of public transportation bonds and persons who entered into contracts with transportation agencies and to protect the credit rating of public agencies in the state.²⁰ By applying *Rider*

and (6) agency performance of functions customarily or historically performed by municipalities and financed through levies of property taxes. *Id.* at 12, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496.

16. *Id.* at 13, 820 P.2d at 1007, 2 Cal. Rptr. 2d at 497. See Walter V. Schaefer, *The Control of "Sunbursts": Techniques of Prospective Overruling*, 42 N.Y.U. L. REV. 631, 635-46 (1967) (illustrating the use by many state and federal courts of prospective overruling and arguing that erratic results in judicial decision-making can be avoided by focusing attention on reliance as a justification for prospective overruling). The apparent policy behind retroactive application of an overruling is reluctance to perpetuate the existing rule. *Id.* at 631; see Roger R. Traynor, *Quo Vadis, Prospective Overruling: A Question of Judicial Responsibility*, 28 HASTINGS L.J. 533, 561 (1977) (suggesting that prospective overruling be applied only when the new rule is the best of all possible replacements and the hardship on a party who has relied on the old rule outweighs the hardship on the party denied the benefit of the new rule).

17. 1992 Cal. Stat. ch. 1233, sec. 2, at ___ (enacting CAL. PUB. UTIL. CODE § 99550). Accordingly, the Legislature relied extensively on the *Richmond* decision in submitting tax measures to a vote and in selling bonds to the public, as well as in entering into long-term contracts, in reliance on tax revenues. *Id.*

18. *Rider*, 1 Cal. 4th at 32, 820 P.2d at 1020-21, 2 Cal. Rptr. 2d at 510-11 (Mosk, J., dissenting).

19. *Id.* at 32, 820 P.2d at 1021, 2 Cal. Rptr. 2d at 511 (Mosk, J., dissenting). Furthermore, failure to repay bonds would reflect poorly on the credit rating of public agencies. 1992 Cal. Stat. ch. 1223, sec. 2, at ___ (enacting CAL. PUB. UTIL. CODE § 99550).

20. 1992 Cal. Stat. ch. 1233, sec. 2, at ___ (enacting CAL. PUB. UTIL. CODE § 99550).

prospectively only, Chapter 1233 mitigates adverse financial effects on transportation agencies in California.²¹

BED

Public Entities, Officers, and Employees; public contracts--payments withheld

Labor Code § 1730 (repealed and new); §§ 1727, 1731, 1732, 1733, 1772, 1773.2, 1775, 1776 (amended).
SB 222 (Greene); 1992 STAT. Ch. 1342

Under existing law, a public agency awarding public works contracts¹ may withhold payments from the contractor for amounts which have been forfeited pursuant to the contract or under existing law.² Existing law additionally requires the awarding body to

21. See *Rider*, 1 Cal. 4th at 21, 820 P.2d at 1020-21, 2 Cal. Rptr. 2d at 510-11 (Mosk, J., dissenting) (describing the fiscal effect of the *Rider* decision if applied retroactively). Justice Mosk also asserts that retroactive effect would be unfair to plaintiffs who had instituted suits on the basis of earlier authority. *Id.* at 33-34, 820 P.2d at 1022, 2 Cal. Rptr. 2d at 512. See generally Frank M. Keesling, *Michelin Tire Corporation v. Wages; The Demise of the Original Package Doctrine*, 50 S. CAL. L. REV. 719, 726 (1977) (arguing that retroactive application of the *Michelin* decision, which eliminated a long-standing exemption for import taxes, would be too severe because had importers knew of the change in law they might have been more diligent in transferring the goods before the assessment date, or they could delay until after the assessment date thereby escaping the tax). Such a retroactive effect may discriminate against importers of foreign goods. *Id.*

1. See CAL. LAB. CODE § 1720 (West 1989) (defining public works); see also *Int'l Brd. of Elec. Works v. Board of Harbor Comm'r*, 68 Cal. App. 3d 556, 562, 137 Cal. Rptr. 372, 375 (1977) (holding that repair work performed upon equipment temporarily being used by the city of San Diego was not public works).

2. CAL. LAB. CODE § 1727 (amended by Chapter 1342). Existing law requires all agencies to include as a term in the contract that the contractor must pay all of the contractor's workers the prevailing wage for their position. *Id.* § 1773.2 (amended by Chapter 1342). Existing law further requires the contractor to maintain a payroll record for the Labor Department to inspect. *Id.* § 1776(a) (amended by Chapter 1342). Contractors who fail to pay the required wage will forfeit the difference to be withheld by the awarding body. *Id.* § 1775 (amended by Chapter 1342); see *Lusardi Const. Co. v. Labor Comm'r*, 1 Cal. 4th 976, 982, 824 P.2d 643, 646, 4 Cal. Rptr. 2d 837, 840 (1992) (holding that the obligation to pay prevailing wage does not depend on the consent of the contractor, and that the Director of the Department of Industrial Relations may determine that a project is a public work). See generally *O. G. Sansone Co. v. Department of Transp.*, 55 Cal. App. 3d 434, 448, 127 Cal. Rptr. 799, 806 (1976) (holding that the state may constitutionally withhold the payments without a

transfer all penalties or forfeitures³ from any contract payment to the Treasurer⁴ to become part of the state's General Fund.⁵ Chapter 1342 provides that penalties or forfeitures retained by the awarding body must be transferred to the Labor Commissioner⁶ whenever a contractor fails to bring suit against the awarding body for recovery within ninety days after completing the contract.⁷ Chapter 1342 further provides that the division of Labor Standards Enforcement⁸ may intervene in a contractor's suit against the awarding body.⁹

STL/MLM

hearing).

3. *See* CAL. LAB. CODE § 1775 (amended by Chapter 1342) (establishing a \$50 penalty assessment against the contractor for each day an employee is underpaid, and providing that the Labor Commissioner will set the amount of forfeiture based on the amount that the contractor has underpaid his employees when compared to the prevailing wage).

4. *See* CAL. GOV'T CODE § 12320 (West 1980) (establishing the duties of the State Treasurer).

5. CAL. LAB. CODE § 1730 (amended by Chapter 1342); *see* CAL. GOV'T CODE § 16300 (West 1980) (establishing the General Fund); *cf.* ARIZ. REV. STAT. ANN. § 34-321 (1991); ARK. CODE ANN. § 22-9-301 (Michie 1987); CONN. GEN. STAT. ANN. § 31-53 (West Supp. 1992); DEL. CODE ANN. tit. 29, § 6912 (1991); HAW. REV. STAT. § 104-2 (1991); ILL. ANN. STAT. ch. 48, para. 39s-1 (Smith-Hurd 1991); KY. REV. STAT. ANN. § 99.480 (Michie/Bobbs-Merrill 1991) (authorizing payment of the prevailing wage by contractors working on public works contracts to their employees).

6. *See* CAL. LAB. CODE § 82 (West 1989) (defining the position and powers of the Labor Commissioner).

7. *Id.* § 1731 (amended by Chapter 1342). Chapter 1342 authorizes the Division of Labor to maintain a court action to recover unpaid prevailing wages whether or not it has received an assignment from the worker to collect the worker's wages. *Id.*

8. *See id.* §§ 79-83 (West 1989) (defining the powers and duties of the Division of Labor Standards Enforcement).

9. *Id.* § 1733 (amended by Chapter 1342). If insufficient funds are withheld under the contract, the Division of Labor Standards Enforcement or the awarding body may maintain an action against the contractor. *Id.* § 1775 (amended by Chapter 1342). The Division of Labor Standards Enforcement must bring the action within 90 days of the completion and acceptance of the work under the contract. *Id.*

Public Entities, Officers, and Employees; resident contractor preferences

Government Code § 14838.2 (new); Public Contract Code § 6107 (new).

AB 2578 (Polanco); 1992 STAT. Ch. 1073

Under existing law, if a state construction project¹ is expected to exceed a total cost of \$25,000, the appropriate state agency must solicit bids² and award the construction project to the lowest responsible bidder or reject all bids.³ Existing law provides goals⁴ and preferences for the use of certain materials or labor in conjunction with construction projects.⁵

1. See CAL. PUB. CONT. CODE § 10105 (West 1985) (defining project as including the erection, alteration, improvement, or repair of any state structure, building, or road which exceeds a total cost of \$25,000).

2. See *id.* § 5100 (West 1985) (defining bid as any proposal to a public entity in competitive bidding for the construction, alteration, or repair of any building, road, structure, or other improvement of any kind).

3. *Id.* § 10108 (West Supp. 1992).

4. See *id.* § 10115.1 (West Supp. 1992) (defining goal).

5. See CAL. GOVT. CODE § 4533 (West Supp. 1992) (providing a 5% bid preference for labor performed in distressed areas); *id.* § 4533.1 (West Supp. 1992) (granting bid preference for work performed by persons with high risk of unemployment); *id.* § 7095 (West Supp. 1992) (providing a bid preference for companies that hire at least 50% of the labor required to perform a project from a designated project area); CAL. PUB. CONT. CODE §§ 10115-10115.10 (West Supp. 1992) (stating project goals for the participation of women); see also *APAC-Mississippi, Inc. v. Deep South Const. Co., Inc.*, 704 S.W.2d 620, 624 (Ark. 1986) (upholding the constitutionality of a bid preference statute challenged on equal protection grounds); *Galesburg Const. Co. v. Board of Trustees*, 641 P.2d 745, 750-51 (Wyo. 1982) (upholding the validity of a Wyoming bid preference statute against equal protection and public policy challenges). *But see* *Associated Gen. Contractors v. City and County of San Francisco*, 813 F.2d 922, 934 (9th Cir. 1987) (holding that a city ordinance granting preferences to minority-owned businesses violated the equal protection clause); *Big D Const. Co. v. Court of Appeals*, 789 P.2d 1061, 1071 (Ariz. 1990) (holding that an Arizona bid preference statute that granted preference to contractors which paid two consecutive years of state or local taxes violated the equal protection clause of Arizona's Constitution). See generally Annotation, *Validity, Construction, and Effect of Requirement Under State or Local Ordinance Giving Local or Locally Qualified Contractors a Percentage Preference in Determining Lowest Bid*, 89 A.L.R. 4th 587, 587-617 (reviewing the disposition of cases involving the constitutionality of bid preference statutes).

Chapter 1073 provides a bid preference to California companies⁶ for the awarding of construction contracts equal to that which a participating non-resident contractor receives in his or her state.⁷ Under Chapter 1073, this provision is not to be applied if such application threatens the receipt of federal funds.⁸

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6. See CAL. PUB. CONT. CODE § 6107(a) (enacted by Chapter 1073) (defining a California company as a business entity having a California contractor's license at the time bids were submitted and either having its principal place of business in California, having its principal place of business in a state in which there are no bid preference statutes, or having its principal place of business in a state in which there is a local contractor construction preference and the contractor has paid more than \$5,000 in sales or use taxes to California for construction-related activity for the five years previous to the submission of the bid).

7. *Id.* § 6107(b)(1) (enacted by Chapter 1073); cf. ARIZ. REV. STAT. ANN. § 34-241 (1990) (providing a bid preference to contractors who paid state or county taxes within that state for at least two consecutive years immediately prior to submitting bid); WYO. STAT. § 9-8-302 (1977) (providing a bid preference for resident contractor of not more than 5%).

8. CAL. PUB. CONT. CODE § 6107(e) (enacted by Chapter 1073); see U.S. CONST., art. 1, § 8, cl. 1 (setting forth the congressional power to lay and collect taxes); *South Dakota v. Dole*, 483 U.S. 203, 207-09 (1987) (holding that Congress has the constitutional authority to conditionally regulate the disbursement of federal funds so long as such regulations: (1) Seek to further the nation's general welfare; (2) are unambiguously written; (3) are related to the federal interest that the grant seeks to further; and (4) are not prohibited by any other constitutional provision). See generally Albert J. Rosenthal, *Conditional Federal Spending and the Constitution*, 39 STAN. L. REV. 1103, 1131-61 (1987) (discussing the constitutionality of conditional federal spending).