

**ASSEMBLY BILL**

**No. 2343**

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**Introduced by Assembly Member Caballero**

February 21, 2008

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An act to amend Sections 2923, 15660.5, 15680 of, and to add Sections 7605, 15660.6, and 15689 to, the Probate Code, relating to public administrators and conservators.

LEGISLATIVE COUNSEL'S DIGEST

AB 2343, as introduced, Caballero. Public administrators and conservators.

(1) Existing law requires the public guardian of a county to comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators.

This bill would require, on or before January 1, 2010, that the public conservator and administrator of a county to comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(2) Existing law provides a method for filling a vacancy if a trust has no trustee or the trust requires a vacancy in the office of cotrustee to be filled. Existing law provides that, if other specified methods of appointing a trustee to fill a vacancy fail, a court may appoint a trustee on the petition of any interested person. Existing law prohibits the public guardian being appointed as a trustee unless the court finds, on reasonable inquiry, that no other qualified person is willing to act as

trustee. Existing law creates in each county the office of public administrator.

This bill would prohibit a public administrator from being appointed as a successor trustee unless certain conditions are met. The bill would require that the public administrator receive notice prior to the hearing to appoint him or her as trustee and would provide that the public administrator may refuse the appointment. The bill would require that the public administrator be the sole trustee, and be appointed only for the duty of terminating the trust and distributing the trust assets. The bill would prohibit the public administrator from being required to act as trustee of any new trusts created by the initial trust. The bill would impose on the public administrator the same liability and limitations on liability as imposed on trustees generally. The bill would specify the expenses and compensation that a public administrator is to receive for acting as a successor trustee, including a minimum compensation of \$1,000, to be paid from trust property. The bill would require that the public administrator receive a bond fee, calculated pursuant to a specified method, to be deposited in the country treasury. The bill would provide that if a public guardian is appointed as a trustee, as specified, the court is required to establish a reasonable rate of compensation for serving as the trustee.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2923 of the Probate Code is amended to  
2 read:  
3 2923. (a) On or before January 1, 2008, the public guardian  
4 shall comply with the continuing education requirements that are  
5 established by the California State Association of Public  
6 Administrators, Public Guardians, and Public Conservators.

1 (b) *On or before January 1, 2010, the public conservator shall*  
2 *comply with the continuing education requirements that are*  
3 *established by the California State Association of Public*  
4 *Administrators, Public Guardians, and Public Conservators.*

5 SEC. 2. Section 7605 is added to the Probate Code, to read:

6 7605. On or before January 1, 2010, the public administrator  
7 shall comply with the continuing education requirements that are  
8 established by the California State Association of Public  
9 Administrators, Public Guardians, and Public Conservators.

10 SEC. 3. Section 15660.5 of the Probate Code is amended to  
11 read:

12 15660.5. The public guardian shall not be appointed as a trustee  
13 of any trust pursuant to subdivision (d) of Section 15660, unless  
14 the court finds, based on reasonable inquiry, that no other qualified  
15 person is willing to act as trustee. *At the time the public guardian*  
16 *is appointed pursuant to this section, the court shall establish a*  
17 *reasonable rate of compensation for serving as trustee.*

18 SEC. 4. Section 15660.6 is added to the Probate Code, to read:

19 15660.6. The public administrator shall not be appointed as  
20 successor trustee of any trust pursuant to subdivision (d) of Section  
21 15660 unless all the requirements of this section are satisfied.

22 (a) Notwithstanding any provision in the decedent's trust,  
23 appointment by the court shall automatically impose the conditions  
24 of this section on the terms of the trust and the administration of  
25 the trust.

26 (b) Notice, governed by Part 2 (commencing with Section 1200)  
27 of Division 3, shall be given to the public administrator prior to  
28 the hearing to appoint the public administrator as trustee.

29 (c) The public administrator may refuse to accept the  
30 appointment as trustee. If the public administrator refuses  
31 appointment as successor trustee, the provisions of Section 15660.5  
32 shall apply.

33 (d) The public administrator shall only be appointed for the  
34 purpose of terminating the trust and distributing the trust assets.

35 (e) At the time of appointment, the settlor shall be deceased and  
36 the trust, according to its terms, shall be ready for termination and  
37 the assets distributed.

38 (f) The public administrator shall be sole trustee.

39 (g) The public administrator shall not be required to act as  
40 trustee of any new trusts created under terms of the trust.

1 (h) A public administrator acting as successor trustee shall have  
2 the same liability and limitations on liability as provided to other  
3 trustees.

4 SEC. 5. Section 15680 of the Probate Code is amended to read:

5 15680. (a) Subject to subdivision (b) *or* (d), if the trust  
6 instrument provides for the trustee’s compensation, the trustee is  
7 entitled to be compensated in accordance with the trust instrument.

8 (b) Upon proper showing, the court may fix or allow greater or  
9 lesser compensation than could be allowed under the terms of the  
10 trust in any of the following circumstances:

11 (1) Where the duties of the trustee are substantially different  
12 from those contemplated when the trust was created.

13 (2) Where the compensation in accordance with the terms of  
14 the trust would be inequitable or unreasonably low or high.

15 (3) In extraordinary circumstances calling for equitable relief.

16 (c) An order fixing or allowing greater or lesser compensation  
17 under subdivision (b) applies only prospectively to actions taken  
18 in administration of the trust after the order is made.

19 (d) *A public administrator who is appointed as a successor*  
20 *trustee, pursuant to Section 15660.6, shall receive compensation*  
21 *pursuant to Section 15689.*

22 SEC. 6. Section 15689 is added to the Probate Code, to read:

23 15689. Notwithstanding any other provision of this article and  
24 the terms of the trust, a public administrator who is appointed as  
25 a successor trustee of a trust pursuant to Section 15660.6 shall be  
26 paid from the trust property for all of the following:

27 (a) Reasonable expenses incurred in the administration of the  
28 trust.

29 (b) Except as provided in subdivision (c), the compensation  
30 payable to the public administrator, and the attorney for the public  
31 administrator, if any, for the filing of an application pursuant to  
32 this division and for performance of any duty or service connected  
33 to the appointment as successor trustee shall be, based on the value  
34 of the trust assets on the date of appointment, that amount set out  
35 in Part 7 (commencing with Section 10800) of Division 7.

36 (c) The public administrator is entitled to a minimum  
37 compensation of one thousand dollars (\$1,000) for serving as  
38 successor trustee.

39 (d) An annual bond fee in the amount of twenty-five dollars  
40 (\$25) plus one-fourth of 1 percent of the amount of the trust assets

1 greater than ten thousand dollars (\$10,000). The amount charged  
2 shall be deposited in the county treasury.

3 SEC. 7. If the Commission on State Mandates determines that  
4 this act contains costs mandated by the state, reimbursement to  
5 local agencies and school districts for those costs shall be made  
6 pursuant to Part 7 (commencing with Section 17500) of Division  
7 4 of Title 2 of the Government Code.

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