

AMENDED IN SENATE JUNE 23, 2008

AMENDED IN SENATE JUNE 17, 2008

AMENDED IN SENATE MAY 6, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2343**

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**Introduced by Assembly Member Caballero**

February 21, 2008

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An act to amend Section 24011 of the Government Code, and to amend Sections 15680 and 15688 of, to add Sections 1456.2 and 7605 to, and to repeal and add Section 15660.5 of, the Probate Code, relating to public administrators and conservators.

LEGISLATIVE COUNSEL'S DIGEST

AB 2343, as amended, 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 permit a public guardian or public administrator to be appointed as a trustee only if certain conditions are met. The bill would prohibit appointment of a public administrator unless the court finds, after reasonable inquiry, that no other qualified person is willing to act as trustee. The bill would prohibit the public administrator from being appointed unless, at the time of the appointment, the entire trust is to be distributed outright or he or she consents. The bill would require that the public guardian or public administrator receive notice prior to the hearing to appoint him or her as trustee, or prior to appointment as a temporary trustee, and would prohibit appointment of the public guardian or public administrator as a cotrustee without his or her consent. If the public guardian or public administrator consents to appointment as trustee, he or she would be required to submit a written certification of the consent to the court. The bill would specify the expenses and compensation that a public guardian, public administrator, and his or her attorney are to receive for acting as a trustee, under specified circumstances, including a minimum compensation of \$1,000, to be paid to the public guardian or public administrator and his or her attorney. The bill would require that the public administrator receive a bond fee, calculated pursuant to a specified method, to be deposited in the county treasury.

(3) Existing law authorizes the boards of supervisors of specified counties to provide, by ordinance, that the public administrator be appointed by the board. Existing law also authorizes the boards of supervisors of specified counties, by ordinance, to appoint the same person to the offices of public administrator and public guardian.

Existing law authorizes the board of supervisors, by ordinance, to consolidate the duties of certain county offices, including the treasurer and public administrator.

This bill would authorize the Board of Supervisors of Ventura County to provide, by ordinance, that the public administrator be appointed by

the board, and to authorize the board to appoint the same person to the offices of public administrator and public guardian. The bill would also authorize the Board of Supervisors of Ventura County to separate the consolidated offices of public administrator and treasurer in order to consolidate the offices of public administrator and public guardian, as specified. *The bill would authorize the Board of Supervisors of Kings County to appoint the same person to the offices of public administrator and guardian.*

(4) 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 24011 of the Government Code is  
2 amended to read:

3 24011. Notwithstanding the provisions of Section 24009:

4 (a) The Boards of Supervisors of Glenn County, Lake County,  
5 Lassen County, Madera County, Mendocino County, Monterey  
6 County, Napa County, Solano County, Sonoma County, Trinity  
7 County, Tuolumne County, and Ventura County may, by ordinance,  
8 provide that the public administrator shall be appointed by the  
9 board.

10 (b) The Boards of Supervisors of Lake County, Madera County,  
11 Mendocino County, Napa County, Trinity County, and Tuolumne  
12 County may appoint the same person to the offices of public  
13 administrator, veteran service officer, and public guardian. The  
14 Boards of Supervisors of Glenn County, *Kings County*, Lassen  
15 County, Monterey County, Solano County, Sonoma County, and  
16 Ventura County, may, by ordinance, appoint the same person to  
17 the offices of public administrator and public guardian.

18 (c) The Boards of Supervisors of Glenn County, Lake County,  
19 Lassen County, Madera County, Mendocino County, Napa County,  
20 Trinity County, and Tuolumne County may separate the

1 consolidated offices of district attorney and public administrator  
2 at any time in order to make the appointments permitted by this  
3 section. Upon approval by the board of supervisors, the officer  
4 elected to these offices at any time may resign, or decline to qualify  
5 for, the office of public administrator without resigning from, or  
6 declining to qualify for, the office of district attorney.

7 (d) The Board of Supervisors of Ventura County may separate  
8 the consolidated office of public administrator from the office of  
9 treasurer, in order to make the appointment authorized by this  
10 section. Upon approval by the board of supervisors, the officer  
11 elected to these offices at any time may resign, or decline to qualify  
12 for, the office of public administrator without resigning from, or  
13 declining to qualify for, the office of treasurer.

14 SEC. 2. Section 1456.2 is added to the Probate Code, to read:

15 1456.2. On or before January 1, 2010, the public conservator  
16 shall comply with the continuing education requirements that are  
17 established by the California State Association of Public  
18 Administrators, Public Guardians, and Public Conservators.

19 SEC. 3. Section 7605 is added to the Probate Code, to read:

20 7605. On or before January 1, 2010, the public administrator  
21 shall comply with the continuing education requirements that are  
22 established by the California State Association of Public  
23 Administrators, Public Guardians, and Public Conservators.

24 SEC. 4. Section 15660.5 of the Probate Code is repealed.

25 SEC. 5. Section 15660.5 is added to the Probate Code, to read:

26 15660.5. (a) The court may appoint as trustee of a trust the  
27 public guardian or public administrator of the county in which the  
28 matter is pending subject to the following requirements:

29 (1) Neither the public guardian nor the public administrator  
30 shall be appointed as trustee unless the court finds, after reasonable  
31 inquiry, that no other qualified person is willing to act as trustee  
32 or the public guardian, public administrator, or his or her  
33 representative consents.

34 (2) The public administrator shall not be appointed as trustee  
35 unless either of the following is true:

36 (A) At the time of the appointment and pursuant to the terms  
37 of the trust, the entire trust is then to be distributed outright. For  
38 purposes of this paragraph, a trust that is “then to be distributed  
39 outright” does not include a trust pursuant to which payments to,  
40 or on behalf of, a beneficiary or beneficiaries are to be made from

1 the trust on an ongoing basis for more than six months after the  
2 date of distribution.

3 (B) The public administrator consents.

4 (3) Neither the public guardian nor the public administrator  
5 shall be appointed as a cotrustee unless the public guardian, public  
6 administrator, or his or her representative consents.

7 (4) Neither the public guardian nor the public administrator  
8 shall be appointed as general trustee without a hearing and notice  
9 to the public guardian or public administrator, or his or her  
10 representative, and other interested persons as provided in Section  
11 17203.

12 (5) Neither the public guardian nor the public administrator  
13 shall be appointed as temporary trustee without receiving notice  
14 of hearing as provided in Section 1220. The court shall not waive  
15 this notice of hearing, but may shorten the time for notice upon a  
16 finding of good cause.

17 (b) (1) If the public guardian or the public administrator  
18 consents to the appointment as trustee under this section, he or she  
19 shall submit a written certification of the consent to the court no  
20 later than two court days after the noticed hearing date described  
21 in paragraph (4) or (5) of subdivision (a). The public administrator  
22 shall not be appointed as trustee under subparagraph (A) of  
23 paragraph (2) of subdivision (a) if, after receiving notice as required  
24 by this section, the public administrator files a written certification  
25 with the court that the public administrator is unable to provide  
26 the level of services needed to properly fulfill the obligations of a  
27 trustee of the trust.

28 (2) If the public administrator has been appointed as trustee  
29 without notice as required in paragraph (4) or (5) of subdivision  
30 (a), and the public administrator files a written certification with  
31 the court that he or she is unable to provide the level of services  
32 needed to properly fulfill the obligations of a trustee of the trust,  
33 this shall be good cause for the public administrator to be relieved  
34 as trustee.

35 (c) The order of appointment shall provide for an annual bond  
36 fee as described in Section 15688.

37 SEC. 6. Section 15680 of the Probate Code is amended to read:

38 15680. (a) Subject to subdivision (b), and except as provided  
39 in Section 15688, if the trust instrument provides for the trustee's

1 compensation, the trustee is entitled to be compensated in  
2 accordance with the trust instrument.

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

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

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

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

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

14 SEC. 7. Section 15688 of the Probate Code is amended to read:

15 15688. Notwithstanding any other provision of this article and  
16 the terms of the trust, a public guardian or public administrator  
17 who is appointed as a trustee of a trust pursuant to Section 15660.5  
18 shall be paid from the trust property for all of the following:

19 (a) Reasonable expenses incurred in the administration of the  
20 trust.

21 (b) Compensation for services of the public guardian or public  
22 administrator and the attorney of the public guardian or public  
23 administrator, as follows:

24 (1) If the public guardian or public administrator is appointed  
25 as trustee of a trust that provides for the outright distribution of  
26 the entire trust estate, compensation for the public guardian or  
27 public administrator, and any attorney for the public guardian or  
28 public administrator, shall be calculated as that provided to a  
29 personal representative and attorney pursuant to Part 7  
30 (commencing with Section 10800) of Division 7, based on the fair  
31 market value of the assets as of the date of the appointment,  
32 provided that the minimum amount of compensation for the public  
33 guardian or the public administrator shall be one thousand dollars  
34 (\$1,000). Additionally, the minimum amount of compensation for  
35 the attorney for the public guardian or the public administrator, if  
36 any, shall be one thousand dollars (\$1,000).

37 (2) For a trust other than that described in paragraph (1), the  
38 public guardian or public administrator shall be compensated as  
39 provided in Section 15680. Compensation shall be consistent with

1 compensation allowed for professional fiduciaries or corporate  
2 fiduciaries providing comparable services.

3 (3) Except as provided in paragraph (1), reasonable  
4 compensation for the attorney for the public guardian or public  
5 administrator.

6 (c) An annual bond fee in the amount of twenty-five dollars  
7 (\$25) plus one-fourth of 1 percent of the amount of the trust assets  
8 greater than ten thousand dollars (\$10,000). The amount charged  
9 shall be deposited in the county treasury.

10 SEC. 8. Due to the unique circumstances of Ventura County,  
11 with respect to the reorganization of their county offices, the  
12 Legislature hereby finds and declares that a general statute cannot  
13 be made applicable within the meaning of Section 16 of Article  
14 IV of the California Constitution. Therefore, the special legislation  
15 contained in Section 1 of this act is necessarily applicable only to  
16 Ventura County.

17 SEC. 9. If the Commission on State Mandates determines that  
18 this act contains costs mandated by the state, reimbursement to  
19 local agencies and school districts for those costs shall be made  
20 pursuant to Part 7 (commencing with Section 17500) of Division  
21 4 of Title 2 of the Government Code.