

Assembly Bill No. 2343

Passed the Assembly July 14, 2008

Chief Clerk of the Assembly

Passed the Senate July 3, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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.

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

SECTION 1. Section 24011 of the Government Code is amended to read:

24011. Notwithstanding the provisions of Section 24009:

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

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

(c) The Boards of Supervisors of Glenn County, Lake County, Lassen County, Madera County, Mendocino County, Napa County, Trinity County, and Tuolumne County may separate the consolidated offices of district attorney and public administrator at any time in order to make the appointments permitted by this section. Upon approval by the board of supervisors, the officer elected to these offices at any time may resign, or decline to qualify for, the office of public administrator without resigning from, or declining to qualify for, the office of district attorney.

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

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

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

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

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

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

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

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

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

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

(A) At the time of the appointment and pursuant to the terms of the trust, the entire trust is then to be distributed outright. For purposes of this paragraph, a trust that is “then to be distributed outright” does not include a trust pursuant to which payments to, or on behalf of, a beneficiary or beneficiaries are to be made from the trust on an ongoing basis for more than six months after the date of distribution.

(B) The public administrator consents.

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

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

(5) Neither the public guardian nor the public administrator shall be appointed as temporary trustee without receiving notice of hearing as provided in Section 1220. The court shall not waive

this notice of hearing, but may shorten the time for notice upon a finding of good cause.

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

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

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

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

15680. (a) Subject to subdivision (b), and except as provided in Section 15688, if the trust instrument provides for the trustee's compensation, the trustee is entitled to be compensated in accordance with the trust instrument.

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

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

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

(3) In extraordinary circumstances calling for equitable relief.

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

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

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

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

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

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

(2) For a trust other than that described in paragraph (1), the public guardian or public administrator shall be compensated as provided in Section 15680. Compensation shall be consistent with compensation allowed for professional fiduciaries or corporate fiduciaries providing comparable services.

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

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

SEC. 8. Due to the unique circumstances of Ventura County, with respect to the reorganization of their county offices, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation

contained in Section 1 of this act is necessarily applicable only to Ventura County.

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

Approved _____, 2008

Governor