

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1856

Introduced by Assembly Member Wilk

February 19, 2014

An act to amend Sections 995.710, 995.720, 995.740, and 995.760 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1856, as amended, Wilk. Deposit in lieu of bond.

Existing law allows, among other things, bearer bonds and bearer notes of the United States or this state and certificates of deposit payable, not exceeding the federally insured amount, issued by banks or savings associations authorized to do business in this state and insured by the Federal Deposit Insurance Corporation to be deposit with the officer, as defined, in lieu of a bond required by an action or proceeding, except as provided.

This bill would allow all bonds and notes of the United States or the State of California and cashiers checks, payable to the officer, to be deposit with the officer in lieu of a bond, as specified.

By requiring local officials to perform additional duties, this bill would impose a state-mandated local program.

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: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 995.710 of the Code of Civil Procedure
2 is amended to read:

3 995.710. (a) Except as provided in subdivision (e) or to the
4 extent the statute providing for a bond precludes a deposit in lieu
5 of bond or limits the form of deposit, the principal may, instead
6 of giving a bond, deposit with the officer any of the following:

7 (1) Lawful money of the United States. The money shall be
8 maintained by the officer in an interest-bearing trust account.

9 (2) Bonds or notes, including bearer bonds and bearer notes, of
10 the United States or the State of California. The deposit of a bond
11 or note pursuant to this section shall be accomplished by filing
12 with the court, and serving upon all parties and the appropriate
13 officer of the bank holding the bond or note, instructions executed
14 by the person or entity holding title to the bond or note that the
15 ~~county~~ treasurer of the county where the judgment was entered is
16 the custodian of that account for the purpose of staying enforcement
17 of the judgment, and that the title holder assigns to the Treasurer
18 the right to collect, sell, or otherwise apply the bond or note to
19 enforce the judgment debtor’s liability pursuant to Section 995.760.

20 (3) Certificates of deposit payable to the officer, not exceeding
21 the federally insured amount, or a cashier’s check made payable
22 to the officer, issued by banks or savings associations authorized
23 to do business in this state and insured by the Federal Deposit
24 Insurance Corporation. ~~A cashier’s check shall be deposited by~~
25 *The funds deposited using a cashier’s check shall be maintained*
26 *by the officer in an interest-bearing trust account* ~~and cleared by~~
27 ~~the bank.~~

28 (4) Savings accounts assigned to the officer, not exceeding the
29 federally insured amount, together with evidence of the deposit in
30 the savings accounts with banks authorized to do business in this
31 state and insured by the Federal Deposit Insurance Corporation.

32 (5) Investment certificates or share accounts assigned to the
33 officer, not exceeding the federally insured amount, issued by

1 savings associations authorized to do business in this state and
2 insured by the Federal Deposit Insurance Corporation.

3 (6) Certificates for funds or share accounts assigned to the
4 officer, not exceeding the guaranteed amount, issued by a credit
5 union, as defined in Section 14002 of the Financial Code, whose
6 share deposits are guaranteed by the National Credit Union
7 Administration or guaranteed by any other agency approved by
8 the Department of Financial Institutions.

9 (b) The deposit shall be in an amount or have a face value, or,
10 in the case of bonds or notes, have a market value, equal to or in
11 excess of the amount that would be required to be secured by the
12 bond if the bond were given by an admitted surety insurer.
13 Notwithstanding any other provision of this chapter, in the case
14 of a deposit of bonds or notes other than in an action or proceeding,
15 the officer may, in the officer's discretion, require that the amount
16 of the deposit be determined not by the market value of the bonds
17 or notes but by a formula based on the principal amount of the
18 bonds or notes.

19 (c) The deposit shall be accompanied by an agreement executed
20 by the principal authorizing the officer to collect, sell, or otherwise
21 apply the deposit to enforce the liability of the principal on the
22 deposit. The agreement shall include the address at which the
23 principal may be served with notices, papers, and other documents
24 under this chapter.

25 (d) The officer may prescribe terms and conditions to implement
26 this section.

27 (e) This section does not apply to deposits with the Secretary
28 of State.

29 SEC. 2. Section 995.720 of the Code of Civil Procedure is
30 amended to read:

31 995.720. (a) The market value of bonds or notes, including
32 bearer bonds and bearer notes, shall be agreed upon by stipulation
33 of the principal and beneficiary or, if the bonds or notes are given
34 in an action or proceeding and the principal and beneficiary are
35 unable to agree, the market value shall be determined by court
36 order in the manner prescribed in this section. A certified copy of
37 the stipulation or court order shall be delivered to the officer at the
38 time of the deposit of the bonds or notes.

39 (b) If the bonds or notes are given in an action or proceeding,
40 the principal may file a written application with the court to

1 determine the market value of the bonds or notes. The application
 2 shall be served upon the beneficiary and proof of service shall be
 3 filed with the application. The application shall contain all of the
 4 following:

- 5 (1) A specific description of the bonds or notes.
- 6 (2) A statement of the current market value of the bonds or notes
 7 as of the date of the filing of the application.
- 8 (3) A statement of the amount of the bonds or notes that the
 9 principal believes would be equal to the required amount of the
 10 deposit.

11 (c) The application pursuant to subdivision (b) shall be heard
 12 by the court not less than five days or more than 10 days after
 13 service of the application. If at the time of the hearing no objection
 14 is made to the current market value of the bonds or notes alleged
 15 in the application, the court shall fix the amount of the bonds or
 16 notes on the basis of the market value alleged in the application.
 17 If the beneficiary contends that the current market value of the
 18 bonds or notes is less than alleged in the application, the principal
 19 shall offer evidence in support of the application, and the
 20 beneficiary may offer evidence in opposition. At the conclusion
 21 of the hearing, the court shall make an order determining the market
 22 value of the bonds or notes and shall fix and determine the amount
 23 of the bonds or notes to be deposited by the principal.

24 SEC. 3. Section 995.740 of the Code of Civil Procedure is
 25 amended to read:

26 995.740. If no proceedings are pending to enforce the liability
 27 of the principal on the deposit, the officer shall:

- 28 (a) Pay quarterly, on demand, any interest on the deposit, when
 29 earned in accordance with the terms of the account or certificate,
 30 to the principal.
- 31 (b) Deliver to the principal, on demand, any interest coupons
 32 attached to bonds or notes, including bearer bonds and bearer notes,
 33 as the interest coupons become due and payable, or pay annually
 34 any interest payable on the bonds or notes.

35 SEC. 4. Section 995.760 of the Code of Civil Procedure is
 36 amended to read:

37 995.760. (a) If the principal does not pay the amount of the
 38 liability on the deposit within the time prescribed in Section
 39 995.750, the deposit shall be collected, sold, or otherwise applied

1 to the liability upon order of the court that entered the judgment
2 of liability, made upon five days' notice to the parties.

3 (b) Bonds or notes, including bearer bonds and bearer notes,
4 without a prevailing market price shall be sold at public auction.
5 Notice of sale shall be served on the principal. Bonds or notes
6 having a prevailing market price may be sold at private sale at a
7 price not lower than the prevailing market price.

8 (c) The deposit shall be distributed in the following order:

9 (1) First, to pay the cost of collection, sale, or other application
10 of the deposit.

11 (2) Second, to pay the judgment of liability of the principal on
12 the deposit.

13 (3) Third, the remainder, if any, shall be returned to the
14 principal.

15 *SEC. 5. If the Commission on State Mandates determines that*
16 *this act contains costs mandated by the state, reimbursement to*
17 *local agencies and school districts for those costs shall be made*
18 *pursuant to Part 7 (commencing with Section 17500) of Division*
19 *4 of Title 2 of the Government Code.*