

AMENDED IN ASSEMBLY MAY 18, 1998
AMENDED IN ASSEMBLY SEPTEMBER 9, 1997
AMENDED IN SENATE FEBRUARY 14, 1997

SENATE BILL

No. 55

Introduced by Senator Kopp

December 6, 1996

~~An act to add Section 53754 to the Government Code, relating to local government assessments. An act to amend Section 1275 of, and to add Section 1275.1 to, the Penal Code, relating to bail.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 55, as amended, Kopp. ~~Local government assessment ballots Bail.~~

~~Existing law, the Proposition 218 Omnibus Implementation Act, prescribes procedures for local jurisdictions to comply with Article XIII D of the California Constitution. Those statutory and constitutional provisions require notice to be mailed to parcel owners that would be subject to a proposed assessment including an assessment ballot to indicate support or opposition to the proposed assessment.~~

~~This bill would provide that the contents of an assessment ballot are confidential and shall not be subject to disclosure pursuant to the California Public Records Act, as specified. The bill would provide that any person who willfully violates its provisions is guilty of a misdemeanor, thereby imposing a state-mandated local program.~~

Under existing law, in setting, reducing, or denying bail, the judge or magistrate is required to take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. Also under existing law, no bail may be accepted unless the judge or magistrate is convinced that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained. Additionally, under existing law, before reducing the bail of a person charged with a serious felony below the amount established by the bail schedule approved for the county, the court is required to make a finding of unusual circumstances and set forth those facts on the record.

This bill would authorize a judge or magistrate to place a hold on the release of a defendant from custody on the basis that the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained only if a peace officer or a prosecutor files a declaration executed under penalty of perjury setting forth probable cause, and would set forth a procedure for making the determination. By expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill also would make technical, conforming changes to existing provisions of law.

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 no reimbursement is required by this act for a specified reason.

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 53754 is added to the~~
- 2 *SECTION 1. Section 1275 of the Penal Code is*
- 3 *amended to read:*



1 1275. (a) In setting, reducing, or denying bail, the
2 judge or magistrate shall take into consideration the
3 protection of the public, the seriousness of the offense
4 charged, the previous criminal record of the defendant,
5 and the probability of his or her appearing at trial or
6 hearing of the case. The public safety shall be the primary
7 consideration. ~~No bail shall be accepted unless the judge
8 or magistrate is convinced that no portion of the
9 consideration, — pledge, — security, — deposit, — or
10 indemnification paid, given, made, or promised for its
11 execution was feloniously obtained.~~

12 In considering the seriousness of the offense charged,
13 the judge or magistrate shall include consideration of the
14 alleged injury to the victim, and alleged threats to the
15 victim or a witness to the crime charged, the alleged use
16 of a firearm or other deadly weapon in the commission of
17 the crime charged, and the alleged use or possession of
18 controlled substances by the defendant.

19 (b) In considering offenses wherein a violation of
20 Chapter 6 (commencing with Section 11350) of Division
21 10 of the Health and Safety Code is alleged, the judge or
22 magistrate shall consider the following: (1) the alleged
23 amounts of controlled substances involved in the
24 commission of the offense, and (2) whether the
25 defendant is currently released on bail for an alleged
26 violation of Chapter 6 (commencing with Section 11350)
27 of Division 10 of the Health and Safety Code.

28 (c) ~~In any case wherein a person is arrested for a
29 violation of Section 11351, 11351.5, 11352, 11378, 11378.5,
30 11379, 11379.5, or 11379.6 of the Health and Safety Code
31 and the person is on probation for a violation of one of
32 those sections or where an allegation pursuant to Section
33 11370.4 or 11379.8 of the Health and Safety Code may be
34 pleaded and proven, and a peace officer has reasonable
35 cause to believe that the consideration, pledge, security,
36 deposit, or indemnification paid, given, made, or
37 promised for bail was feloniously obtained, the peace
38 officer shall prepare a declaration under penalty of
39 perjury setting forth the facts and circumstances in
40 support of his or her belief and file it with a magistrate,~~



1 as defined in Section 808, in the county in which the
2 offense is alleged to have been committed or having
3 jurisdiction of the person of the defendant, or a
4 commissioner of the magistrate, requesting an order
5 denying bail. The defendant either personally, or through
6 his or her attorney, friend, or member of his or her family,
7 may also make application to the magistrate for release on
8 bail. The magistrate or commissioner to whom the
9 application is made may deny release on bail pending the
10 hearing described in Section 825. If, after the application
11 is made, no order granting or denying bail is issued within
12 eight hours after booking, the defendant shall be entitled
13 to release on posting the amount of bail set forth in the
14 applicable bail schedule.

15 This subdivision shall only apply for the period
16 described in Section 825 in which an arrestee shall be
17 taken to a magistrate.

18 (d) The bail of any defendant found to have willfully
19 misled the court regarding the source of bail may be
20 increased as a result of the misrepresentation. The
21 misrepresentation may be a factor considered in any
22 subsequent bail hearing.

23 (e) Before a court reduces bail below the amount
24 established by the bail schedule approved for the county,
25 in accordance with subdivisions (b) and (c) of Section
26 1269b, for a person charged with a serious felony, as
27 defined in subdivision (c) of Section 1192.7, or a violent
28 felony, as defined in subdivision (c) of Section 667.5, the
29 court shall make a finding of unusual circumstances and
30 shall set forth those facts on the record. For purposes of
31 this subdivision, “unusual circumstances” does not
32 include the fact that the defendant has made all prior
33 court appearances or has not committed any new
34 offenses.

35 SEC. 2. Section 1275.1 is added to the Penal Code, to
36 read:

37 1275.1. (a) Bail, pursuant to this chapter, shall not be
38 accepted unless a judge or magistrate finds that no
39 portion of the consideration, pledge, security, deposit, or



1 indemnification paid, given, made, or promised for its
2 execution was feloniously obtained.

3 (b) A hold on the release of a defendant from custody
4 shall only be ordered by a magistrate or judge if either of
5 the following occurs:

6 (1) A peace officer, as defined in Section 830, files a
7 declaration executed under penalty of perjury setting
8 forth probable cause to believe that the source of any
9 consideration, pledge, security, deposit, or
10 indemnification paid, given, made, or promised for its
11 execution was feloniously obtained.

12 (2) A prosecutor files a declaration executed under
13 penalty of perjury setting forth probable cause to believe
14 that the source of any consideration, pledge, security,
15 deposit, or indemnification paid, given, made, or
16 promised for its execution was feloniously obtained.

17 (c) Once a magistrate or judge has determined that
18 probable cause exists, as provided in subdivision (b), a
19 defendant bears the burden by a preponderance of the
20 evidence to show that no part of any consideration,
21 pledge, security, deposit, or indemnification paid, given,
22 made, or promised for its execution was obtained by
23 felonious means. Once a defendant has met such burden,
24 the magistrate or judge shall release the hold previously
25 ordered and the defendant shall be released under the
26 authorized amount of bail.

27 (d) The defendant and his or her attorney shall be
28 provided with a copy of the declaration of probable cause
29 filed as required under subdivision (b) no later than the
30 date set forth in Section 825.

31 (e) Nothing in this section shall prohibit a defendant
32 from obtaining a loan of money so long as the loan will be
33 funded and repaid with funds not feloniously obtained.

34 (f) At the request of any person providing any portion
35 of the consideration, pledge, security, deposit, or
36 indemnification paid, given, made, or promised for its
37 execution, the magistrate or judge, at an evidentiary
38 hearing to determine the source of the funds, may close
39 it to the general public to protect the person's right to
40 privacy in his or her financial affairs.



1 (g) If the declaration, having been filed with a
2 magistrate or judge, is not acted on within 24 hours, the
3 defendant shall be released from custody upon posting of
4 the amount of bail set.

5 (h) Nothing in this code shall deny the right of the
6 defendant, either personally or through his or her
7 attorney, bail agent licensed by the Department of
8 Insurance, admitted surety insurer licensed by the
9 Department of Insurance, friend, or member of his or her
10 family from making an application to the magistrate or
11 judge for the release of the defendant on bail.

12 (i) The bail of any defendant found to have willfully
13 misled the court regarding the source of bail may be
14 increased as a result of the willful misrepresentation. The
15 misrepresentation may be a factor considered in any
16 subsequent bail hearing.

17 (j) If a defendant has met the burden under
18 subdivision (c), and a defendant will be released from
19 custody upon the issuance of a bail bond issued pursuant
20 to authority of Section 1269 or 1269b by any admitted
21 surety insurer or any bail agent, approved by the
22 Insurance Commissioner, the magistrate or judge shall
23 vacate the holding order imposed under subdivision (b)
24 upon the condition that the bail bond must be posted only
25 by the surety or licensed bail agent of the surety who
26 presented the financial information to the court.

27 (k) As used in this section, “feloniously obtained”
28 means any consideration, pledge, security, deposit, or
29 indemnification paid, given, made, or promised for its
30 execution which is possessed, received, or obtained
31 through an unlawful act, transaction, or occurrence.

32 SEC. 3. No reimbursement is required by this act
33 pursuant to Section 6 of Article XIII B of the California
34 Constitution because the only costs that may be incurred
35 by a local agency or school district will be incurred
36 because this act creates a new crime or infraction,
37 eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section
39 17556 of the Government Code, or changes the definition



1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.

3 Notwithstanding Section 17580 of the Government
4 Code, unless otherwise specified, the provisions of this act
5 shall become operative on the same date that the act
6 takes effect pursuant to the California Constitution.

7 Government Code, to read:

8 53754. (a) Notwithstanding any other provision of
9 law, and except as provided in subdivision (b), the
10 contents of an assessment ballot submitted to an agency
11 pursuant to Section 4 of Article XIII D of the California
12 Constitution shall be confidential and shall not be subject
13 to disclosure pursuant to the California Public Records
14 Act (Chapter 3.5 (commencing with Section 6250) of
15 Division 7 of Title 1) or any other provision of law.

16 (b) The provisions of subdivision (a) shall not apply to
17 the following:

18 (1) Any public officer or other designated person who
19 has the duty of receiving, processing, or tabulating
20 assessment ballots under applicable law. The provisions of
21 this paragraph shall not be construed to permit the
22 disclosure of the contents of an assessment ballot to any
23 person for any purpose other than that specifically set
24 forth in this paragraph.

25 (2) Any person who submitted an assessment ballot to
26 the agency and subsequently requests the return of that
27 assessment ballot for the purpose of lawfully changing or
28 withdrawing the ballot pursuant to Section 53753.

29 (3) Any court order requiring disclosure of the
30 contents of one or more assessment ballots in connection
31 with any criminal or civil action or proceeding.

32 (c) An agency shall establish appropriate and
33 reasonable administrative, technical, and physical
34 safeguards to ensure the security and confidentiality of
35 assessment ballots pursuant to this section.

36 (d) Any person who willfully violates the
37 confidentiality or disclosure provisions of subdivision (a)
38 shall be guilty of a misdemeanor.



1 ~~(c) This section shall apply to all “local governments”~~
 2 ~~as defined in subdivision (b) of Section 1 of Article XIII C~~
 3 ~~of the California Constitution.~~

4 ~~SEC. 2. No reimbursement is required by this act~~
 5 ~~pursuant to Section 6 of Article XIII B of the California~~
 6 ~~Constitution because the only costs that may be incurred~~
 7 ~~by a local agency or school district will be incurred~~
 8 ~~because this act creates a new crime or infraction,~~
 9 ~~eliminates a crime or infraction, or changes the penalty~~
 10 ~~for a crime or infraction, within the meaning of Section~~
 11 ~~17556 of the Government Code, or changes the definition~~
 12 ~~of a crime within the meaning of Section 6 of Article~~
 13 ~~XIII B of the California Constitution.~~

14 ~~Notwithstanding Section 17580 of the Government~~
 15 ~~Code, unless otherwise specified, the provisions of this act~~
 16 ~~shall become operative on the same date that the act~~
 17 ~~takes effect pursuant to the California Constitution.~~

