AMENDED IN SENATE AUGUST 30, 2010

california legislature—2009–10 regular session

ASSEMBLY BILL No. 1706

Introduced by Assembly Member Ammiano
(Coauthors: Assembly Members Ma and Hill)
(Coauthor: Senator Leno)

February 1, 2010

~~An act to amend Sections 1000 and 1000.1 of the Penal Code, relating to criminal procedure.~~ *An act to repeal and add Section 53395.8 of the Government Code, and to amend Section 96.1 of the Revenue and Taxation Code, relating to infrastructure financing districts, and declaring the urgency thereof, to take effect immediately.*

legislative counsel's digest

AB 1706, as amended, Ammiano. ~~Criminal procedure: narcotics and drug abuse cases.~~ *Infrastructure financing districts: City and County of San Francisco.*

Existing law specifically authorizes the City and County of San Francisco to create infrastructure financing districts, adopt infrastructure financing plans for those districts, and issue bonds financed by projected increases in ad valorem property taxes to fund certain public facilities, pursuant to a specified procedure. Existing property tax law establishes various procedures and requirements with respect to the annual apportionment and allocation of ad valorem property tax revenues, including increased revenues from infrastructure financing districts.

This bill would recast these provisions authorizing the City and County of San Francisco to create infrastructure financing districts that include specified waterfront property. This bill would also modify *the procedures for San Francisco to adopt an infrastructure financing plan, and allocate projected increases in ad valorem property taxes to specified annual apportionments.*

This bill would make legislative findings and declarations as to the necessity of a special statute for City and County of San Francisco.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law provides that entry of judgment may be deferred with respect to defendants who are charged with certain enumerated crimes and meet certain criteria, including no prior convictions for any offense involving controlled substances and no prior felony convictions within the prior 5 years, as specified. Existing law requires the prosecuting attorney to review his or her file to determine whether those conditions apply to the defendant and, if the defendant is found ineligible for deferred entry of judgment, to file with a court a declaration stating the grounds upon which the determination is based.~~

~~This bill would authorize the court, at the defendant's request, to review the prosecuting attorney's determination of ineligibility and would further authorize the court to make the final determination, as specified.~~

~~The bill would also make conforming changes.~~

Vote: ~~majority~~ *⅔*. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Areas of San Francisco, including portions of the San Francisco waterfront, are characterized by deteriorating conditions that cannot be remedied by private investment alone, and require the use of public financing mechanisms to finance the rectification of deteriorating conditions.

(b) (1) The San Francisco waterfront, generally extending 7.5 miles from Fisherman's Wharf to Candlestick Point, is a valuable public trust asset of the state and provides special maritime, navigational, recreational, cultural, and historical benefits to the people of the region and the state. The San Francisco waterfront includes a 65-acre site known as Pier 70, which is the oldest continuously operating shipyard on the West Coast. For over 150

years, some portion of this site has been in use for shipbuilding and repair, steel production, and supporting heavy industrial uses. Until 1967, the United States Department of Defense occupied and controlled significant portions of Pier 70. In 2001, the Office of Historic Preservation determined that Pier 70's approximately 40 historic buildings, structures, and features are eligible collectively for listing on the National Register of Historic Places as contributors to a Pier 70 historic district. Under the Burton Act (Ch. 1333, Stats. 1968, as amended) and the Burton Act transfer agreement, in 1969, the state conveyed the San Francisco waterfront to the City and County of San Francisco, through its port, in trust for the public and Burton Act trust purposes, subject to the obligation on the part of the City and County of San Francisco to assume fifty-five million dollars ($55,000,000) in state debt obligations then existing relating to the waterfront properties. Under the San Francisco Charter, the people of San Francisco charged the Port of San Francisco with administration of the San Francisco waterfront and the responsibility for discharging the preexisting debt obligations. Since 1969, these preexisting debt obligations have limited the port's ability to finance substantial investment in public trust facilities within its jurisdiction, resulting in deteriorating conditions along the San Francisco waterfront, including, but not limited to, all of the following:

(A) Since 2002, the port's chief harbor engineer, who is responsible for assessing threats to life safety due to the condition of facilities within port jurisdiction, has conducted structural assessments of the port's historic structures at Pier 70, that have resulted in the condemnation of 11 buildings and load and use restrictions in 14 other buildings at the site.

(B) The port's Pier 70 structures were built before the adoption of seismic construction standards in the 1955 edition of the Uniform Building Code, and are constructed on bay fill or bay mud in locations designated by the United States Geological Survey as seismic hazard areas. Many older port facilities may be unsafe during a large seismic event due to the lack of seismic standards governing their construction and the liquefaction risk associated with port property.

(C) Pier 70 has been used for heavy industrial uses for more than 150 years and is adjacent to the Potrero powerplant. Pier 70

and surrounding property are industrial brownfields known to be contaminated by heavy metals, hydrocarbons, and other pollutants. The historic buildings at Pier 70 will require significant investment to abate hazardous materials prior to demolition or rehabilitation.

(D) The port's Pier 70 waterfront contains numerous deteriorating piles that are the remnants of former pile-supported structures and no longer serve a useful purpose.

(2) Beginning in the early 1990s, in response to economic and land use needs of the port and as directed by the San Francisco electorate, the port undertook a public planning process related to the improvement and development of the San Francisco waterfront. This process resulted in the port's adoption of a waterfront land use plan in 1997, which identified Pier 70 as the most significant mixed-use development opportunity in the port's southern waterfront.

(3) In 2006, pursuant to the San Francisco Administrative Code, the port developed a capital plan identifying public facilities necessary and convenient to the improvement, operation, and conduct of the San Francisco waterfront. Among these public facilities are: (A) seismic and life-safety improvements to existing buildings, (B) rehabilitation, restoration, and preservation of certain historic piers and other historic structures, (C) shoreline restoration and structural repairs and improvements to piers, seawalls, wharves, and other maritime facilities, (D) remediation of hazardous materials, (E) removal of bay fill, (F) stormwater management facilities and other utility infrastructure improvements, and (G) public open space improvements, including those required by the San Francisco Bay Conservation and Development Commission's San Francisco Waterfront Special Area Plan. In 2008, the estimated cost to implement the port's capital plan was approximately one billion nine hundred million dollars ($1,900,000,000), an amount far in excess of the revenues projected to be available to the port for these purposes.

(4) From 2006 to 2008, inclusive, the port conducted a community master planning process for the Pier 70 district. The master plan calls for continued ship repair on approximately 15 acres of the site, the nomination of the Pier 70 National Register Historic District to the National Register of Historic Places, up to 3 million square feet of compatible infill development, up to 20 acres of waterfront open space, including a major new section of

the San Francisco Bay Trail, and a development phasing schedule and financing plan that will allow the area to reunite with the surrounding central waterfront. The port projects that the costs to rehabilitate Pier 70, excluding costs associated with new development at the site, will exceed $1 billion in 2008 dollars and will require significant federal, state, and local funding.

(c) In November 2008, San Francisco voters approved an amendment to the San Francisco Charter to provide revenues equal to up to 75 percent of projected new hotel and payroll tax revenues from development in the Pier 70 area to fund historic preservation and infrastructure costs of rehabilitating the Pier 70 area. The port estimates that rehabilitation costs for the Pier 70 area will far exceed the additional revenues provided by the charter measure.

(d) In February 2010, the BMW ORACLE Racing (BOR) Team, sailing under the burgee of the Golden Gate Yacht Club, won the 33rd America's Cup, off the coast of Valencia, Spain. The America's Cup, which was first raced for in 1851, is one of the oldest sporting trophies in sailing history. As the victor and official "Defender" of the Cup, the Golden Gate Yacht Club of San Francisco and the BOR Team will determine when and where the 34th America's Cup will be held. The City and County of San Francisco is the sole city in the United States under consideration to host the 34th America's Cup sailing regatta. The BOR Team has designated as the potential venue for the 34th America's Cup the San Francisco waterfront area generally from Pier 30 to the north and Pier 50 to the south, excluding the China Basin ballpark site, Seawall Lot 351, and the Rincon Point-South Beach Redevelopment Project Area. The timing of the 34th America's Cup has not been finalized, but it will be held in either 2013 or 2014. The venue selection deadline is December 31, 2010, and the City and County of San Francisco must deliver its proposal for hosting the 34th America's Cup to the BOR Team by September 30, 2010.

(e) An economic impact study by the Bay Area Council's Economic Institute and Beacon Economics released in July 2010 concludes that hosting the America's Cup on the San Francisco Bay would generate nearly 9,000 jobs and $1.4 billion in direct spending in the San Francisco Bay Area and California, and nearly $1.9 billion nationwide. The study reports that the America's Cup

is the world's third largest sporting competition after the Olympics and the World Cup.

(f) The San Francisco waterfront is a valuable public trust asset of the state that provides special maritime, navigational, recreational, cultural, and historical benefits to the people of the region and the state. Realizing the goals of the port waterfront land use plan, the San Francisco Bay Conservation and Development Commission special area plan, and the port capital plan is a matter of statewide significance, and rectifying the deteriorating conditions along the San Francisco waterfront caused by deferred maintenance since 1969 by providing a financing mechanism, through the use of incremental property tax revenues, is a matter of statewide importance that will further the purposes of both the public trust and the Burton Act trust. Public facilities along the San Francisco waterfront to be financed pursuant to the infrastructure financing district law will increase public access to, or use or enjoyment of, public trust lands and are, therefore, facilities of statewide and communitywide significance.

(g) The City and County of San Francisco wants to establish one or more infrastructure financing districts to finance public facilities along the San Francisco waterfront through its port, including a district in the Pier 70 area and a district covering the potential America's Cup. Due to the extraordinary capital needs of the port, it is the intent of the Legislature to provide the City and County of San Francisco and its port the widest latitude, within the framework of the infrastructure financing district law, to create and operate infrastructure financing districts in the manner that provides the optimal financing options to construct needed public facilities on public trust waterfront lands in order to meet the stated goals of statewide significance. In order to adapt the provisions of Chapter 2.8 (commencing with Section 53395) of Part 1 of Division 2 of Title 5 of the Government Code, relating to infrastructure financing districts, to these unique circumstances, this special act is necessary.

SEC. 2. Section 53395.8 of the Government Code is repealed.

~~53395.8. (a) This section applies only to the City and County of San Francisco. For the purposes of this chapter, the City and County of San Francisco is a city.~~

~~(b) In addition to the findings and declarations in Section 53395, the Legislature further finds and declares that consolidating in a~~

~~single public agency the responsibility to administer waterfront lands in the City and County of San Francisco that are subject to the public trust and the ability to capture property tax increment revenues to finance needed public infrastructure improvements in those areas will further the objectives of the public trust and enjoyment of those trust lands by the people of the state.~~

~~(c) Notwithstanding subdivision (c) of Section 53395.1, for the purposes of this section,"debt" includes commercial paper and variable rate demand notes.~~

~~(d) In addition to the purposes provided in subdivision (a) of Section 53395.3, a district subject to this section may finance the environmental remediation of any real or tangible property that the district may finance pursuant to Section 53395.3. The district may also finance planning and design work that is directly related to the improvement, seismic retrofit, or environmental mediation of that property. The district may not finance routine nonstructural repair work.~~

~~(e) In addition to the public capital facilities of communitywide significance that a district may finance pursuant to subdivision (b) of Section 53395.3, a district subject to this section may finance all of the following:~~

~~(1) Seismic and life-safety improvements to existing buildings and other structures.~~

~~(2) Rehabilitation, restoration, and preservation of structures, buildings, or other facilities having special historical, architectural, or aesthetic interest or value and that are either eligible for listing on the National Register of Historic Places, both individually or because of their location within an eligible registered historic district, or are locally designated landmarks.~~

~~(3) Structural repairs and improvements to piers, seawalls, and wharves.~~

~~(4) Remediation of hazardous materials.~~

~~(5) Storm water management facilities, other utility infrastructure, or public access improvements.~~

~~(f) Notwithstanding Section 53395.4, a district subject to this section may include tidelands and submerged lands, including filled lands, subject to the public trust for commerce, navigation, and fisheries, and the applicable statutory trust grant or grants. Where a district includes tidelands and submerged lands, whether filled or unfilled, and finances facilities located on these tidelands~~

~~and submerged lands, these facilities shall serve and promote uses and purposes consistent with the public trust and applicable statutory trust grants. These facilities shall be public trust assets subject to the administration and control of the legislative trust grantee of the public trust lands on which they are constructed. However, if these facilities are among the public capital facilities listed in paragraphs (1) to (4), inclusive, of subdivision (b) of Section 53395.3 or paragraph (5) of subdivision (e) of this section and are not owned by the public agency administering the public trust lands, but are owned and operated by another entity pursuant to a license from or an agreement with the public agency administering the public trust lands, then these facilities are not required to become public trust assets. The district shall maintain accounting procedures in accordance, and otherwise comply, with Section 6306 of the Public Resources Code.~~

~~(g) Notwithstanding Section 53395.5, nothing in this chapter shall prohibit the formation of a district on urban waterfront property, nor the financing of needed public infrastructure projects located on public trust lands, pursuant to this section.~~

~~(h) Notwithstanding subdivision (c) of Section 53395.14, infrastructure improvements that increase public access to, or use or enjoyment of, public trust lands pursuant to this section shall be deemed to satisfy the requirements of that subdivision.~~

~~(i) Notwithstanding Section 53395.20 or any other provision of law, if all of the land in a district subject to this section would be publicly owned, no election shall be required to form the district, and the legislative body may, by ordinance, adopt the infrastructure financing plan and create the district, upon recommendation of the public agency with jurisdiction over the land.~~

~~(j) (1) Notwithstanding any other provision of this chapter, the legislative body may amend an infrastructure financing plan subject to this section to extend the time limitations for receipt of property tax increment beyond the 30-year period from adoption of the ordinance for the district for a period not to exceed 10 years to pay bonded indebtedness, if the district does all of the following:~~

~~(A) Includes an amendment, if necessary, to increase the total number of dollars to be allocated to the district.~~

~~(B) Prepares an analysis of the projected fiscal impact on each affected taxing entity.~~

~~(C) Sets a time and date for a public hearing on the matter.~~

~~(2) The amendment to the infrastructure financing plan shall be mailed by the clerk to each affected taxing entity for its review. Each affected taxing entity shall review and consent to or disapprove the amended infrastructure financing plan within 60 days of the receipt thereof.~~

~~(k) (1) The legislative body shall hold a public hearing regarding the amendment to the infrastructure financing plan within 60 days after each affected taxing entity has approved the extension.~~

~~(2) The public hearing, and notice thereof, shall be conducted in accordance with Sections 53395.17 and 53395.18. At the conclusion of the hearing, the legislative body may adopt an ordinance adopting the infrastructure financing plan, as modified, or it may abandon the proceedings.~~

SEC. 3. Section 53395.8 is added to the Government Code, to read:

53395.8. (a) This section applies only to the City and County of San Francisco, and to any waterfront district.

(b) In addition to the findings and declarations in Section 53395, the Legislature further finds and declares that consolidating in a single public agency the responsibility to administer waterfront lands in San Francisco that are subject to the public trust and the ability to capture property tax increment revenues to finance needed public facilities in those areas will further the objectives of the public trust and enjoyment of those trust lands by the people of the state.

(c) For purposes of this section, the following terms have the following meanings except as otherwise provided:

(1) "Affected taxing entity" means any governmental taxing agency, except San Francisco and its local educational agencies, that levied or had levied on its behalf a property tax on all or a portion of the land located in the proposed district in the fiscal year prior to the designation of the district, all or a portion of which the district proposes to collect in the future under its infrastructure financing plan.

(2) "America's Cup district" means a waterfront district that includes the waterfront area in the City and County of San Francisco designated as the potential venue for the 34th America's Cup, generally from Pier 30 to Pier 50, excluding the China Basin

ballpark site, Seawall Lot 351, and the Rincon Point-South Beach Redevelopment Project Area.

(3) "Base year" means the fiscal year during which any infrastructure financing plan adopted under this chapter becomes effective.

(4) "Board" means the Board of Supervisors of the City and County of San Francisco, which shall be the legislative body for any district formed under this section.

(5) "Debt" means loans, advances, or other forms of indebtedness and financial obligations, including, but not limited to, commercial paper, variable rate demand notes, all moneys payable in relation to the debt, and all debt service coverage requirements in any debt instrument, in addition to the obligations specified in the definition of "debt" in Section 53395.1.

(6) "District" means any district created under this chapter, including any project area within a district.

(7) "Enhanced financing plan" means an infrastructure district financing plan for a Pier 70 district or an America's Cup district that contains a provision authorized under subparagraph (D) or subparagraph (E), respectively, of paragraph (3) of subdivision (g).

(8) "ERAF" means the Educational Revenue Augmentation Fund.

(9) "ERAF-secured debt" means debt that is secured by and will be repaid from the ERAF share and is incurred to finance, as applicable: (A) a Pier 70 district subject to an enhanced financing plan; or (B) an America's Cup district subject to an enhanced financing plan.

(10) "ERAF share" means the county ERAF portion of incremental tax revenue committed, as applicable, to: (A) a Pier 70 district under an enhanced financing plan; or (B) an America's Cup district under an enhanced financing plan.

(11) "Local educational agencies" means, collectively, the San Francisco Unified School District, the San Francisco Community College District, and the San Francisco County Office of Education.

(12) "Mirant site" means the San Francisco waterfront land owned by Mirant Corporation, on which it or its affiliate formerly operated a coal gasification powerplant.

(13) "Pier 70 district" means a waterfront district that includes 65 acres of waterfront land in the area near Pier 70.

(14) "Port" means the Port of San Francisco.

(15) "Project area" means a defined area designated for development within a waterfront district formed under this chapter in accordance with subdivision (g).

(16) "Public facilities" means facilities and, where the context requires, related services, authorized to be financed in any part by a district formed under this chapter in accordance with subdivision (g).

(17) "San Francisco" means the City and County of San Francisco. For purposes of applying this chapter, San Francisco is a city.

(18) "Waterfront district" means a district formed under this chapter on land under port jurisdiction along the San Francisco waterfront.

(19) "Waterfront set aside" means the restricted funds required to be set aside under clause (ii) of subparagraph (C) of paragraph (3) of subdivision (g).

(d) In addition to the facilities and services authorized by Section 53395.3, a waterfront district may finance any of the following:

(1) Remediation of hazardous materials in, on, under, or around any real or tangible property.

(2) Seismic and life-safety improvements to existing buildings.

(3) Rehabilitation, restoration, and preservation of structures, buildings, or other facilities having special historical, architectural, or aesthetic interest or value and that are listed on the National Register of Historic Places, are eligible for listing on the National Register of Historic Places individually or because of their location within an eligible registered historic district, or are listed on a state or local register of historic landmarks.

(4) Structural repairs and improvements to piers, seawalls, breakwaters, and wharves, including installation of flood protection measures necessary to maintain the useful life of maritime facilities.

(5) Removal of bay fill.

(6) Stormwater management facilities, other utility infrastructure, or public open-space improvements.

(7) Shoreline restoration.

(8) Other repairs and improvements to maritime facilities, including improvements required for relocation activities arising from repairs and improvements to maritime facilities.

(9) Planning and design work that is directly related to any public facilities authorized to be financed by a waterfront district.

(e) A waterfront district may include, and finance public facilities on, tidelands and submerged lands, including filled or unfilled lands, subject to the public trust for commerce, navigation, and fisheries, and the applicable statutory trust grant or grants. Public facilities located on tidelands and submerged lands shall serve and promote uses and purposes consistent with the public trust and applicable statutory trust grants. Public facilities that increase access to, or the use or enjoyment of, public trust lands will be deemed to be facilities of communitywide significance that provide significant benefits to an area larger than the area of the district.

(f) Public facilities financed by a waterfront district shall be public trust assets subject to the administration and control of the port, except for the following:

(1) Utility infrastructure and public transportation facilities, except maritime transportation facilities that are administered and controlled by another entity under an agreement with the port.

(2) Public facilities on land located in a previously formed waterfront district that the port subsequently leases, sells, or otherwise transfers to any person free of the public trust, the Burton Act trust, and any additional restrictions on use or alienability created by the Burton Act transfer agreement, provided that the State Lands Commission has concurred in the lifting of trust restrictions on the transferred land and that the transferred land will remain in and subject to the district.

(g) For a waterfront district, the requirements of this subdivision supplant and replace the provisions of Sections 53395.10 to 53395.25, inclusive. The board may adopt or amend one or more infrastructure financing plans for districts along the San Francisco waterfront according to the procedures in this section. A district may be divided into project areas, each of which may be subject to distinct time limitations established under this subdivision.

(1) The board shall initiate proceedings for the establishment of a district by adopting a resolution of intention to establish the proposed district that does all of the following:

(A) States an infrastructure financing district is proposed to be established and describes the boundaries of the proposed district. The boundaries may be described by reference to a map on file in the office of the clerk of the board.

(B) States the type of public facilities proposed to be financed by the district.

(C) States that incremental property tax revenue from San Francisco and some or all affected taxing entities within the district, but none of the local educational agencies, may be used to finance these public facilities.

(D) Directs the executive director of the port, or an appropriate official designated by the executive director, to prepare a proposed infrastructure financing plan.

(2) The board shall direct the city clerk to mail a copy of the resolution of intention to any affected taxing entities.

(3) The proposed infrastructure financing plan shall be consistent with the general plan of San Francisco, as amended from time to time, and shall include all of the following:

(A) A map and legal description of the proposed district, which may include all or a portion of the district designated by the board in its resolution of intention.

(B) A description of the public improvements and facilities required to serve the development proposed in the district, including those to be provided by the private sector, those to be provided by governmental entities without assistance under this chapter, those public facilities to be financed with assistance from the proposed district, and those to be provided jointly. The description shall include the proposed location, timing, and projected costs of the public improvements and facilities.

(C) A financing section that shall contain all of the following:

(i) A provision that specifies the maximum portion of the incremental tax revenue of San Francisco and of any affected taxing entity proposed to be committed to the district, and affirms that the plan will not allocate any portion of the incremental tax revenue of the local educational agencies to the district.

(ii) Limitations on the use of levied taxes allocated to and collected by the district that provide that incremental tax revenues allocated to a district must be used within the district for purposes authorized under this section, and that not less than 20 percent of the amount allocated to a district shall be set aside to be expended

solely on shoreline restoration, removal of bay fill, or waterfront public access to or environmental remediation of the San Francisco waterfront.

(iii) A projection of the amount of incremental tax revenues expected to be received by the district, assuming a period of 45 years from the base year of the infrastructure financing plan.

(iv) Projected sources of financing for the public facilities to be assisted by the district, including debt to be repaid with incremental tax revenues, projected revenues from future leases, sales, or other transfers of any interest in land within the district, and any other legally available sources of funds.

(v) A limitation on the number of dollars of levied taxes that may be divided and allocated to the district. Taxes shall not be divided or be allocated to the district beyond this limitation, except by amendment of the infrastructure financing plan pursuant to the procedures in this subdivision.

(vi) A date on which the effectiveness of the infrastructure financing plan and all tax allocations to the district will end and a time limit on the district's authority to repay indebtedness with incremental tax revenues received under this chapter, not to exceed 45 years from the date of the board's resolution of intent to issue bonds to be repaid with incremental tax revenues under this chapter. After the time limits established under this subparagraph, a district shall not receive incremental tax revenues under this chapter.

(vii) An analysis of the costs to San Francisco for providing facilities and services to the district while the district is being developed and after the district is developed, and of the taxes, fees, charges, and other revenues expected to be received by San Francisco as a result of expected development in the district.

(viii) An analysis of the projected fiscal impact of the district and the associated development upon any affected taxing entity. If no affected taxing entities exist within the district because the plan does not provide for collection by the district of any portion of property tax revenues allocated to any taxing entity other than San Francisco, the district has no obligation to any other taxing entity under this subdivision.

(ix) A statement that the district will maintain accounting procedures in accordance, and otherwise comply, with Section 6306 of the Public Resources Code for the term of the plan.

(D) For a Pier 70 district only, an enhanced financing plan may contain a provision meeting the requirements of Section 53396 that allocates a portion of the incremental tax revenue of San Francisco and of other designated affected taxing entities to the Pier 70 district. The portion of incremental tax revenue of San Francisco to be allocated to the Pier 70 district must be equal to the portion of the incremental tax revenue of the county ERAF proposed to be committed to the Pier 70 district. In addition to all other requirements under this section, a Pier 70 district shall also be subject to the following additional limitations:

(i) A Pier 70 district subject to an enhanced financing plan shall not be formed and become effective for at least three full fiscal years following the effective date of this section.

(ii) Any enhanced financing plan shall contain all of the following:

(I) A time limit on new ERAF-secured debt to finance the district, which may not exceed 20 fiscal years from the fiscal year in which any Pier 70 district subject to an enhanced financing plan first issues debt. The ERAF-secured debt may be repaid over the period of time ending on the time limit established under clause (vi) of subparagraph (C). This time limit on new ERAF-secured debt shall not prevent a Pier 70 district from subsequently refinancing, refunding, or restructuring ERAF-secured debt if the debt is not increased and the time during which the debt is to be repaid is not extended beyond the time limit established under clause (vi) of subparagraph (C).

(II) A statement that the Pier 70 district shall be subject to a limitation on the number of dollars of the ERAF share that may be divided and allocated to the Pier 70 district pursuant to an enhanced financing plan, including any amendments to the plan, which shall be established in consultation with the county auditor. This limitation and a schedule specifying the amount of the ERAF share that must be divided and allocated to the district in each succeeding fiscal year until all ERAF-secured debt has been paid shall be included in the statement of indebtedness that the Pier 70 district files for the 19th fiscal year after the fiscal year in which any ERAF-secured debt is first issued. The ERAF share shall not be divided and shall not be allocated to the Pier 70 district beyond that limitation.

(III) The limitations established by subclauses (I) and (II) may be amended only by amendment of this section. When the ERAF-secured debt, if any, has been paid, all moneys thereafter allocated to the ERAF share shall be paid into ERAF as taxes on all other property are paid. In addition, beginning in the 21st fiscal year after the fiscal year in which ERAF-secured debt is first issued, any portion of the ERAF share in excess of the amount required to meet the Pier 70 district's ERAF-secured debt service obligations shall be paid into ERAF.

(E) Only for an America's Cup district and upon the condition that San Francisco is the host city for the 34th America's Cup, an enhanced financing plan may contain a provision meeting the requirements of Section 53396 that allocates a portion of the incremental tax revenue of San Francisco and of other designated affected taxing entities to the America's Cup district. The maximum portion of incremental tax revenue of San Francisco to be allocated to the America's Cup district must be equal to the portion of the incremental tax revenue of the county ERAF proposed to be committed to the America's Cup district. In addition to all other requirements under this section, an America's Cup district shall also be subject to the following additional limitations:

(i) Any enhanced financing plan shall contain the following:

(I) A time limit on new ERAF-secured debt to finance the district, which may not exceed 20 fiscal years from the fiscal year in which any America's Cup district subject to an enhanced financing plan first issues debt. The ERAF-secured debt may be repaid over the period of time ending on the time limit established under clause (vi) of subparagraph (C). This time limit on new ERAF-secured debt shall not prevent an America's Cup district from subsequently refinancing, refunding, or restructuring ERAF-secured debt if the debt is not increased and the time during which the debt is to be repaid is not extended beyond the time limit established under clause (vi) of subparagraph (C).

(II) A statement that the America's Cup district will be subject to a limitation on the number of dollars of the ERAF share that may be divided and allocated to the America's Cup district pursuant to the enhanced financing plan, including any amendments to the plan, which shall be established in consultation with the county auditor. This limitation and a schedule specifying the amount of the ERAF share that must be divided and allocated

to the district in each succeeding fiscal year until all ERAF-secured debt has been paid shall be included in the statement of indebtedness that the America's Cup district files for the 19th fiscal year after the fiscal year in which any ERAF-secured debt is first issued. The ERAF share shall not be divided and shall not be allocated to the America's Cup district beyond that limitation.

(III) The limitations established by clauses (I) and (II) may be amended only by amendment of this section. When the ERAF-secured debt, if any, has been paid, all moneys thereafter allocated to the ERAF share shall be paid into ERAF as taxes on all other property are paid. In addition, beginning in the 21st fiscal year after the fiscal year in which ERAF-secured debt is first issued, any portion of the ERAF share in excess of the amount required to meet the America's Cup district's ERAF-secured debt service obligations shall be paid into ERAF.

(4) Except as provided in subdivision (i), the board shall not enact a resolution proposing formation of a district and providing for the division of taxes of any affected taxing entities for use in a Pier 70 district or an America's Cup district, as applicable, as set forth in the proposed infrastructure financing plan unless a resolution approving the plan has been adopted by the governing body of each affected taxing entity that is proposed to be subject to division of taxes as set forth in the proposed infrastructure financing plan, and that resolution has been filed with the board at or prior to the time of the hearing. A resolution approving the plan adopted by the governing body of an affected taxing entity shall be deemed the affected taxing entity's agreement to participate in the plan for the purposes of Section 53395.19.

(5) If the governing body of an affected taxing entity has not approved the infrastructure financing plan before the board considers the plan, the board may amend the infrastructure financing plan to remove the allocation of the tax revenues of the nonconsenting affected taxing entity. If a plan is so amended, the plan also shall be amended to provide that San Francisco will allocate to the Pier 70 district, or an America's Cup district, as applicable, funds equal on a dollar-for-dollar basis to the tax revenues that the Pier 70 district, or an America's Cup district, as applicable, would have received from the allocation of tax revenues of the affected taxing entity that is removed from the plan.

(6) The board shall hold a public hearing regarding the infrastructure financing plan that shall be scheduled on a date no earlier than 60 days after the plan has been sent to each affected taxing entity, or in the absence of any affected taxing entities, no earlier than 30 days after the plan has been lodged with the clerk of the board. Notice of the public hearing must be published not less than once a week for four successive weeks in a newspaper designated by the board for the publication of official notices in San Francisco, or if the board no longer designates a newspaper for the publication of official notices, a newspaper of general circulation serving primarily San Francisco residents. The notice shall state that the district will be established to finance public facilities, briefly describe the public facilities and the proposed financial arrangements, including the proposed commitment of incremental tax revenue, describe the boundaries of the proposed district, and state the day, hour, and place when and where any persons having any objections to the proposed infrastructure financing plan, or the regularity of any of the previous proceedings, may appear before the board and object to the adoption of the proposed infrastructure financing plan by the board.

(7) At the hour set in the required notices, the board shall proceed to hear and pass upon all written and oral objections. The hearing may be continued from time to time. The board shall consider any recommendations of affected taxing entities, and all evidence and testimony for and against the adoption of the infrastructure financing plan.

(8) No election will be required to form the district, and at the conclusion of the hearing, the board may adopt an ordinance adopting the infrastructure financing plan, as drafted or as modified by the board, or it may abandon the proceedings.

(9) Any public or private owner of land that is not within an existing district, but that has any boundary line contiguous to a boundary of the waterfront district, may petition the board for inclusion of the land in the waterfront district without an election. As a condition to inclusion of its land in the waterfront district, the petitioning landowner shall acknowledge and agree that any portion of the land within 100 feet of the San Francisco Bay Conservation and Development Commission shoreline (shoreline band) will include contiguous public access along the length of the shoreline band, improved and maintained to standards equal

to adjacent waterfront public access ways on public land, as certified by the San Francisco Bay Conservation and Development Commission. Nothing in this section is intended to affect or limit the authority of the San Francisco Bay Conservation and Development Commission pursuant to Chapter 1 (commencing with Section 66600) of Title 7.2, or any other law. This procedure will apply to any petition to include the Mirant site in the Pier 70 district, but the board may amend the Pier 70 financing plan to include the Mirant site in the Pier 70 district only after the Director of Finance's approval.

(10) The ordinance creating a district and adopting or amending an infrastructure financing plan shall establish the base year for the district. The board may amend an infrastructure financing plan by ordinance to divide an established district into one or more project areas, to reduce the district area, or, to expand a waterfront district to include the petitioning landowner's land in the district in accordance with the board's established procedures. Any ordinance adopting or amending an infrastructure financing plan will be deemed an ordinance adopted for the purposes of Section 53395.23.

(h) (1) All the amounts calculated under this subdivision shall be calculated after deducting the waterfront set-aside from the total amount of tax increment funds allocated to a district in the applicable fiscal year. The payments made under this subdivision to the affected taxing entities shall be allocated among the affected taxing entities in proportion to the percentage share of property taxes each affected taxing entity receives during the fiscal year the funds are allocated. The percentage share shall be determined without regard to any amounts allocated to a city, county, or city and county under Sections 97.68 and 97.70 of the Revenue and Taxation Code.

(2) (A) Prior to incurring any debt, except loans or advances from San Francisco, a district may subordinate to the debt the amount required to be paid to an affected taxing entity under this subdivision, if any, provided the affected taxing entity has approved these subordinations as provided in this paragraph.

(B) At the time the district requests an affected taxing entity to subordinate the amount to be paid to it, the district shall provide the affected taxing entity with substantial evidence that sufficient funds will be available to pay when due both the debt service on

the debt and the payments to the affected taxing entity required under this subdivision.

(C) Within 45 days after receipt of the district's request, the affected taxing entity shall approve or disapprove the request for subordination. An affected taxing entity may disapprove a request for subordination only if it finds, based upon substantial evidence, that the district will not be able to pay when due the debt payments and the amount required to be paid to the affected taxing entity. If the affected taxing entity does not act within 45 days after receipt of the district's request, the request to subordinate shall be deemed approved and its deemed approval shall be final and conclusive.

(3) The Legislature finds and declares all of the following:

(A) The payments to be made under this subdivision are necessary in order to alleviate the financial burden and detriment that affected taxing entities may incur as a result of the adoption of an infrastructure financing plan, and payments made under this subdivision will benefit the district.

(B) The payments to be made under this subdivision are the exclusive payments that are required to be made by a district to affected taxing entities during the term of an infrastructure financing plan.

(i) The portion of taxes required to be allocated to a Pier 70 district, or an America's Cup district, as applicable, under a duly adopted infrastructure financing plan shall be allocated and paid to the district by the county auditor or officer responsible for the payment of taxes into the funds of the respective taxing entities under the procedure contained in this subdivision. If the approved plan allocates to a Pier 70 district, or an America's Cup district, as applicable, 100 percent of the incremental tax revenue of San Francisco, then the district shall not make a payment to ERAF, but if the plan allocates less than 100 percent of the incremental tax revenue of San Francisco to a Pier 70 district, or an America's Cup district, as applicable, then the district shall pay a proportionate share of incremental tax revenue into ERAF.

(1) No later than October 1 of each year, for each district for which the infrastructure financing plan provides for the division of taxes, the district shall file with the county auditor or officer a statement of indebtedness and a reconciliation statement for the previous fiscal year certified by the chief financial officer of the district.

(2) Each statement of indebtedness shall contain all of the following:

(A) For each debt the district has incurred or entered into, all of the following:

(i) The date the district incurred or entered into the debt.

(ii) The principal amount, term, purpose, interest rate, and total interest payable over the term of the debt.

(iii) The principal amount and interest due in the fiscal year in which the statement is filed.

(iv) The total amount of principal and interest remaining to be paid over the term of the debt.

(B) The sum of the principal and interest due on all debts in the fiscal year in which the statement is filed.

(C) The sum of principal and interest remaining to be paid on all debts.

(D) The available revenues as of the end of the previous fiscal year.

(3) The district may estimate the amount of principal or interest, the interest rate, or term of any debt if the nature of the debt is such that the amount of principal or interest, the interest rate or term cannot be precisely determined. The district may list on a statement of indebtedness any debt incurred or entered into on or before the date the statement is filed.

(4) Each reconciliation statement shall include all of the following:

(A) A list of all debts listed on the previous year's statement of indebtedness, if any.

(B) A list of all debts not listed on the previous year's statement of indebtedness, but incurred or entered into in the previous year and paid in whole or in part from incremental tax revenue received by the district. This listing may aggregate into a single item debts incurred or entered into in the previous year for a particular purpose, such as relocation expenses, administrative expenses, consultant expenses, or remediation of hazardous materials.

(C) For each debt described in subparagraph (A) or (B), all of the following shall be included:

(i) The total amount of principal and interest remaining to be paid as of the later of the beginning of the previous year or the date the debt was incurred or entered into.

(ii) Any increases or additions to the debt occurring during the previous year.

(iii) The amount paid on the debt in the previous year from incremental tax revenue received by the district.

(iv) The amount paid on the debt in the previous year from revenue other than incremental tax revenue received by the district.

(v) The total amount of principal and interest remaining to be paid as of the end of the previous fiscal year.

(D) The available revenues of the district as of the beginning of the previous fiscal year.

(E) The amount of incremental tax revenue received by the district in the previous fiscal year.

(F) The amount of available revenue received by the district in the previous fiscal year other than incremental tax revenue.

(G) The sum of the amounts paid on all debts from sources other than incremental tax revenue, to the extent that the amounts are not included as available revenues under subparagraph (F).

(H) The sum of the amounts specified in subparagraphs (D) to (G), inclusive.

(I) The sum of the amounts specified in clauses (iii) and (iv) of subparagraph (C) of paragraph (4).

(J) The amount determined by subtracting the amount determined under subparagraph (I) from the amount determined under subparagraph (H). The amount determined under this paragraph shall be the available revenues as of the end of the previous fiscal year to be reported in the statement of indebtedness.

(5) For the purposes of this paragraph, available revenues shall include all cash or cash equivalents held by the district that were received by the district under subparagraph (D) of paragraph (3) of subdivision (g) and all cash or cash equivalents held by the district that are irrevocably pledged or restricted to payment of a debt that the district has listed on a statement of indebtedness. In no event shall available revenues include funds allocated to the waterfront set aside.

(6) For the purposes of this subdivision: (A) the amount a district is required to deposit into the waterfront set aside shall constitute an indebtedness of the district, (B) no debt that a district intends to pay from the waterfront set aside shall be listed on a statement of indebtedness or reconciliation statement as a debt of the district, and (C) any statutorily authorized deficit in or

borrowing from funds in the waterfront set aside shall constitute an indebtedness of the district.

(7) The county auditor or officer shall allocate and pay, at the same time or times as the payment of taxes into the funds of the respective taxing agencies of the county, the portion of incremental tax revenues allocated to each district under the infrastructure financing plan. The amount allocated and paid shall not exceed the amount of the district's remaining debt obligations, as determined under subparagraph (C) of paragraph (2), minus the amount of available revenues as of the end of the previous fiscal year, as determined under subparagraph (D) of paragraph (2).

(8) The statement of indebtedness constitutes prima facie evidence of the debts of the district.

(A) If the county auditor or other officer disputes the amount of the district's debts as shown on the statement of indebtedness, the county auditor or other officer, within 30 days after receipt of the statement, shall give written notice to the district thereof.

(B) The district, within 30 days after receipt of notice under subparagraph (A), shall submit any further information it deems appropriate to substantiate the amount of any debt that has been disputed. If the county auditor or other officer still disputes the amount of debt, final written notice of that dispute shall be given to the district, and the amount disputed may be withheld from allocation and payment to the district as otherwise required by paragraph (7). In that event, the auditor or other officer shall bring an action in the superior court for declaratory relief to determine the matter no later than 90 days after the date of the final notice.

(C) In any court action brought under this paragraph, the issue shall involve only the amount of debt, and not the validity of any contract or debt instrument or any expenditures pursuant thereto. Payments to a trustee under a bond resolution or indenture of any kind or payments to a public agency in connection with payments by that public agency under a lease or bond issue shall not be disputed in any action under this paragraph. The matter shall be set for trial at the earliest possible date and shall take precedence over all other cases except older matters of the same character. Unless an action is brought within the time provided for herein, the auditor or other officer shall allocate and pay the amount shown on the statement of indebtedness as provided in paragraph (7).

(D) Nothing in this subdivision shall be construed to permit a challenge to or attack on matters precluded from challenge or attack by reason of Sections 53395.6 and 53395.7. However, nothing in this subdivision shall be construed to deny a remedy against the district otherwise provided by law.

(E) The Controller shall prescribe uniform forms consistent with this subdivision for a district's statement of indebtedness and reconciliation statement. In preparing these forms, the Controller shall obtain the input of the San Francisco City Controller, the San Francisco Tax Collector, and the port.

(F) For the purposes of this subdivision, a fiscal year shall be a year that begins on July 1 and ends the following June 30.

(j) (1) Prior to the adoption by the board of an infrastructure financing plan providing for tax increment financing under subparagraph (D) or (E) of paragraph (3) of subdivision (g), any affected taxing entity may elect to be allocated, and every local educational agency shall be allocated, all or any portion of the tax revenues allocated to the district under subparagraph (D) or (E) of paragraph (3) of subdivision (g) attributable to increases in the rate of tax imposed for the benefit of the taxing entity which levy occurs after the tax year in which the ordinance adopting the infrastructure financing plan becomes effective.

(2) The governing body of any affected taxing entity electing to receive allocation of taxes under this subdivision shall adopt a resolution to that effect and transmit the same, prior to the adoption of the infrastructure financing plan, to (A) the board, (B) the district, and (C) the official or officials performing the functions of levying and collecting taxes for the affected taxing entity. Upon receipt by the official or officials of the resolution, allocation of taxes under this section to the affected taxing entity shall be made at the time or times allocations are made under subdivision (a) of Section 33670 of the Health and Safety Code.

(3) An affected taxing entity, at any time after the adoption of the resolution, may elect not to receive all or any portion of the additional allocation of taxes under this section by rescinding the resolution or by amending the same, as the case may be, and giving notice thereof to the board, the district, and the official or officials performing the functions of levying and collecting taxes for the affected taxing entity. After receipt of a notice by the official or officials that an affected taxing entity has elected not to receive

all or a portion of the additional allocation of taxes by rescission or amendment of the resolution, any allocation of taxes to the affected taxing entity required to be made under this section shall not thereafter be made but shall be allocated to the district. After receipt of a notice by the official or officials that an affected taxing entity has elected to receive additional tax revenues attributable to only a portion of the increases in the rate of tax, only that portion of the tax revenues shall thereafter be allocated to the affected taxing entity, and the remaining portion thereof shall be allocated to the district.

(k) This section implements and fulfills the intent of Article 2 (commencing with Section 53395.10) and of Article XIII B and Section 16 of Article XVI of the California Constitution. The allocation and payment to a district of the portion of taxes specified in subparagraph (D) or (E) of paragraph (3) of subdivision (g) for the purpose of paying principal of, or interest on, loans, advances, or indebtedness incurred for facilities under this section shall not be deemed the receipt by a district of proceeds of taxes levied by or on behalf of the district within the meaning or for the purposes of Article XIII B of the California Constitution, nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B of the California Constitution or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to a district of this portion of taxes shall not be deemed the appropriation by a district of proceeds of taxes levied by or on behalf of a district within the meaning or for purposes of Article XIII B of the California Constitution.

SEC. 4. Section 96.1 of the Revenue and Taxation Code is amended to read:

96.1. (a) Except as otherwise provided in Article 3 (commencing with Section 97), and in Article 4 (commencing with Section 98), for the 1980–81 fiscal year and each fiscal year thereafter, property tax revenues shall be apportioned to each jurisdiction pursuant to this section and Section 96.2 by the county auditor, subject to allocation and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code *and subparagraphs (D) and (E) of paragraph (3) of* *subdivision (g) of Section 53395.8 of the Government Code*, to each jurisdiction in the following manner:

(1) For each tax rate area, each jurisdiction shall be allocated an amount of property tax revenue equal to the amount of property tax revenue allocated pursuant to this chapter to each jurisdiction in the prior fiscal year, modified by any adjustments required by Section 99 or 99.02.

(2) The difference between the total amount of property tax revenue and the amounts allocated pursuant to paragraph (1) shall be allocated pursuant to Section 96.5, and shall be known as the "annual tax increment."

(3) For purposes of this section, the amount of property tax revenue referred to in paragraph (1) shall not include amounts generated by the increased assessments under Chapter 3.5 (commencing with Section 75).

(b) Any allocation of property tax revenue that was subjected to a prior completed audit by the Controller, pursuant to the requirements of Section 12468 of the Government Code, where all findings have been resolved, shall be deemed correct.

(c) (1) Guidelines for legislation implementation issued and determined necessary by the State Association of County Auditors, and when adopted as regulations by either the Controller or the Department of Finance pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, shall be considered an authoritative source deemed correct until some future clarification by legislation or court decision.

(2) If a county auditor knowingly does not follow the guidelines referred to in paragraph (1), that county auditor shall inform the Controller of the reason or reasons for not following the guidelines. If the Controller disagrees with the stated reason or reasons for not following the guidelines, the provisions of paragraph (3) do not apply.

(3) If, by audit begun on or after July 1, 2001, or discovery by an entity on or after July 1, 2001, it is determined that an allocation method is required to be adjusted and a reallocation is required for previous fiscal years, the cumulative reallocation or adjustment may not exceed 1 percent of the total amount levied at a ~~1 percent~~ *1-percent* rate of the current year's original secured tax roll. The reallocation shall be completed in equal increments within the following three fiscal years, or as negotiated with the Controller

in the case of reallocation to the Educational Revenue Augmentation Fund or school entities.

(4) If it is determined that an allocation method is required to be adjusted as provided in paragraph (3), the county auditor shall, in the fiscal year following the fiscal year in which this determination is made, correct the allocation method in accordance with statute.

SEC. 5. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the City and County of San Francisco. The facts constituting the special circumstances are: areas of San Francisco, including certain portions of the San Francisco waterfront, are characterized by deteriorating conditions that cannot be remedied by private investment alone, and require the use of public financing mechanisms to finance the rectification of deteriorating conditions.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To assist the City and County of San Francisco in making a timely bid to host the 34th America's Cup and otherwise assist in promoting economic development, it is necessary for this bill to go into immediate effect.

~~SECTION 1. Section 1000 of the Penal Code is amended to read:~~

~~1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or subdivision (b) of Section 23222 of the Vehicle Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4060 of the~~

~~Business and Professions Code, and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:~~

~~(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged offense.~~

~~(2) The offense charged did not involve a crime of violence or threatened violence.~~

~~(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.~~

~~(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.~~

~~(5) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense.~~

~~(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.~~

~~(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant. Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the superior court, or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment. If the defendant is found ineligible for deferred entry of judgment, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. At the request of the defendant, the court may review the prosecuting attorney's determination of ineligibility and is authorized to make the final~~

~~determination of eligibility based upon the criteria specified in this section. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal.~~

~~(c) All referrals for deferred entry of judgment granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.~~

~~(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.~~

~~(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.~~

~~SEC. 2. Section 1000.1 of the Penal Code is amended to read:~~

~~1000.1. (a) If the prosecuting attorney or the court determines that this chapter may apply to the defendant, the prosecuting attorney shall advise the defendant and his or her attorney in writing of that determination. This notification shall include all of the following:~~

~~(1) A full description of the procedures for deferred entry of judgment.~~

~~(2) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in the process.~~

~~(3) A clear statement that in lieu of trial, the court may grant deferred entry of judgment with respect to any crime specified in subdivision (a) of Section 1000 that is charged, provided that the defendant pleads guilty to each of these charges and waives time for the pronouncement of judgment, and that upon the defendant's successful completion of a program, as specified in subdivision~~

~~(c) of Section 1000, the positive recommendation of the program authority and the motion of the prosecuting attorney, the court, or the probation department, but no sooner than 18 months and no later than three years from the date of the defendant's referral to the program, the court shall dismiss the charge or charges against the defendant.~~

~~(4) A clear statement that upon any failure of treatment or condition under the program, or any circumstance specified in Section 1000.3, the prosecuting attorney or the probation department or the court on its own may make a motion to the court for entry of judgment and the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.~~

~~(5) An explanation of criminal record retention and disposition resulting from participation in the deferred entry of judgment program and the defendant's rights relative to answering questions about his or her arrest and deferred entry of judgment following successful completion of the program.~~

~~(b) If the defendant consents and waives his or her right to a speedy trial or a speedy preliminary hearing, the court may refer the case to the probation department or the court may summarily grant deferred entry of judgment if the defendant pleads guilty to the charge or charges and waives time for the pronouncement of judgment. When directed by the court, the probation department shall make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior controlled substance use, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which programs the defendant would benefit from and which programs would accept the defendant. The probation department shall report its findings and recommendations to the court. The court shall make the final determination regarding education, treatment, or rehabilitation for the defendant. If the court determines that it is appropriate, the court shall grant deferred entry of judgment if the defendant pleads guilty to the charge or charges and waives time for the pronouncement of judgment.~~

~~(c) No statement, or any information procured therefrom, made by the defendant to any probation officer or drug treatment worker, that is made during the course of any investigation conducted by the probation department or treatment program pursuant to subdivision (b), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.~~

~~No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, that is made to any probation officer or drug program worker subsequent to the granting of deferred entry of judgment, shall be admissible in any action or proceeding, including a sentencing hearing.~~

~~(d) A defendant's plea of guilty pursuant to this chapter shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to Section 1000.3.~~

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