**RESOLUTION 02-01-2017**

**DIGEST**
Public Employee Retirement Funds: Divestment from Businesses Supporting Border Wall
Adds Government Code section 7513.73 to require public employment retirement funds to divest from investment in businesses contributing to the construction of a wall along the United States' border with Mexico.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution adds Government Code section 7513.73 to require public employment retirement funds to divest from investment in businesses contributing to the construction of a wall along the United States' border with Mexico. This resolution should be disapproved because it is vague and overbroad, and could harm the economic stability of the pension funds.

This resolution seeks to require the California Public Employees' Retirement Fund ("CalPERS") and the California Teachers' Retirement Fund ("CalSTRS") to cease investing, and liquidate existing investment, in any business contributing to building a wall along the United States' southern border.

The language of this resolution is problematic. It requires divestment from "any company contributing to the construction of a wall," but provides no definition for what constitutes a contribution. In contrast, Assembly Bill 946 (2017) specifically defined a "border wall construction company" as "any company that contracts or subcontracts to build, maintain, or provide material for President Trump's Border Wall."

Further, the concept behind this resolution is bad policy. The fund administrators should be focused on earning strong returns, as their fiduciary duties require, and not on political messaging. Making investment decisions predicated on a particular political agenda, particularly where there is strong disagreement on the merits, could hurt taxpayers, who must make up any shortfalls created by lost investments; and surrender the pension fund's vote as a major investor. (*CalPERS Says Divesting from Border Wall, Dakota Pipeline Could Hurt Taxpayers*, The Sacramento Bee, http://www.sacbee.com/news/politics-government/the-state-worker/article144047384.html.)

This resolution is no more than a symbol meant to show that California stands firmly against the current administration's immigration policies. But it does so by punishing contractors and other businesses for seeking work and doing their jobs, and it results in weakening the public employee retirement funds. Any fight against the wall should take place in Congress and at the ballot box.

This resolution mirrors Assembly Bill No. 946 (Ting, Gonzalez, Fletcher) introduced earlier this year, which has since been withdrawn.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add Government Code section 7513.73 to read as follows:

§ 7513.73

(a) As used in this section:

(1) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(2) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, or its subsidiary or affiliate, that exists for profit-making purposes or to otherwise secure economic advantage.

(3) "The wall" means a physical wall along the United States' southern border.

(4) "Investment" means the purchase, ownership, or control of publicly issued stock, corporate bonds, or other debt instruments issued by a company.

(5) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(b) On and after January 1, 2018, the board shall not make additional investments or renew existing investments of public employee retirement funds in in any company contributing to the construction of a wall along the United States' southern border.

(c) On or before July 1, 2018, the board shall liquidate its investments in any company contributing to the construction of a wall along the United States' southern border.

(d) Nothing in this section shall require a board to take action as described in this section unless the board determines in good faith that the action described in this section is consistent with the fiduciary responsibilities of the board described in Section 17 of Article XVI of the California Constitution.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bay Area Lawyers for Individual Freedom

**STATEMENT OF REASONS**

The Problem: Existing law does not address any aspect of the wall's construction.

The Solution: This resolution would require California's two public employee pension funds to divest any holdings in companies involved in the creation of the anticipated wall between the southern border of the United States and Mexico.

The construction of a wall between the southern border of the United States and Mexico has been one component of the Trump Administration's attempt to restrict the arrival of immigrants from Mexico and other Latin American countries. Symbolically, the construction of the wall expresses

a national commitment to xenophobia, racism and Eurocentric nationalism. By constructing the wall on the southern border, the Trump administration has effectively targeted immigrants from Latin America, forcing them to go great lengths to come to the United States—often as a means of escaping dangerous conditions, reuniting with one's family, or seeking economic stability. In doing so, the construction of the wall itself expresses a national preference for non-Latino immigrants. Californians have no interest in such bigotry.

The projected goals of the wall—as described by the Trump Administration—are also largely unrealistic. Take, for example, the Administration's claim that the wall will reduce criminal activity both in the United States and surrounding the border. Immigration and security experts have shown that, the more difficult it becomes to cross the border, the more likely undocumented migrants are to turn to smugglers for help traveling into the United States, a cycle that fuels illegal activity, props up networks of organized crime.

Additionally, any effort to seal off the border will also make conditions more dangerous for the undocumented immigrants who still try to make it over—either through the help of dangerous smugglers, or by their own means—putting their health and safety at an increased risk.
From an environmental perspective, the consequences are devastating. The construction of the wall is likely to result in significant amounts of pollution for cities and neighborhoods in close proximity to the southern border, resulting in substantial health concerns. As of 2010, there were approximately 15 million people living in border counties on both sides of the Mexico-U.S. border, according to the Wilson Center's State of the Border Report, a majority of which are populated by some of the most marginalized communities. Therefore, the construction of a wall on the southern border would threaten living conditions for California's and the nation's most vulnerable individuals.

Scientists and environmentalists have also been warning about the additional negative effects, like restricted animal movement and plant pollination, of a border wall for over a decade. For example, in September 2016, Sergio Avila-Villegas, a conservation scientist at the Arizona-Sonora Desert Museum, told BBC's Science in Action team that "Border infrastructure not only blocks the movement of wildlife, but... destroys the habitats, fragments the habitats and the connectivity that these animals use to move from one place to another."

In early 2017, the Trump Administration submitted a presolicitation notice to the Federal Business Opportunities' website in an attempt to solicit construction and engineering firms interested in constructing a wall on the United States' border with Mexico. In order to fulfill the Trump administration's goals with respect to the construction of a wall, the structure will require the assistance of numerous construction and engineering organizations. Currently, approximately 350 construction and engineering firms have expressed interest in contributing to the construction of a wall along the southern border of the United States. The construction of a wall will result in significant economic, social, and psychological harm for Californians. The construction of a wall is projected to have serious environmental consequences for Californians and individuals throughout the nation. Those living closest to the United States' border with Mexico—many of whom are members of the United States' most marginalized communities—are expected to endure most of the environmental ramifications of a wall's construction, given their close proximity to the construction sites. As Californians, we must hold ourselves to a

high standard of conduct, including how we invest our pension funds. Both morally and fiscally, the millions of dollars that the Public Employees' Retirement System and the State Teachers' Retirement System have invested in companies actively contributing to the construction of this type of detrimental project can be better spent elsewhere.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
This resolution uses language from previous divestment bills either passed or introduced in the California legislature. Such resolutions include AB 20 and SB185.

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**RESPONSIBLE FLOOR DELEGATE:** Felicia Medina

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## COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

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### SACRAMENTO COUNTY BAR ASSOCIATION

This resolution requires that the government divest public employment retirement funds from businesses supporting the creation of a wall along the United States' border with Mexico. The resolution should be opposed because it shifts the focus of CalPERS away from its stated mission, which is to provide responsible and efficient stewardship of the system to deliver promised retirement and health benefits, while promoting wellness and retirement security for members and beneficiaries.

It is bad policy to over-politicize the investment mission of PERS, STRS, or any other government retirement system by requiring it to engage in social investing without approval from the beneficiaries, or to divest from any legal company conducting legal activities that may be offensive to some people. For example, last year CalPERS issued a report that concluded that the requirement that it not invest in tobacco stocks cost the fund, and by extension the men and women who rely on the fund for their retirement benefits, $3 billion between 2001, when the stocks were required to be sold, and June 2016. Complicating matters, the resolution would require divestment in any entity that supports the construction of the wall, but "support" is undefined. Are the transit agencies that bring raw materials and supplies to be boycotted? Are the companies that produce raw materials that are purchased by the federal government for use in the wall's construction?

The issue of the wall notwithstanding, public employment retirement fund managers should be able to use their financial and investment expertise to recommend which companies to invest in. They should also be allowed to develop and follow their own divestment policies. For example,

CalPERS has a divestment policy approach that engages shareowners, senior managers and the board of directors of the companies it invests in. This direct engagement approach is generally more effective in bringing about change in a corporation than avoiding investment entirely. Moreover, forcing divestment for differing, and potentially competing political causes may interfere with the funds' fiduciary responsibilities to their members, while having a negative impact on portfolio performance and on the overall health of the funds and could have the bizarre unintended consequence of not allowing the funds to invest in properties that will benefit the people who depend upon it for their retirements.

It is well documented that California's unfunded pension liabilities have grown exponentially since the Great Recession of the early 2000s. CalPERS had a 0.61 investment return for 2015-16. (https://www.calpers.ca.gov/page/newsroom/calpers-news/2016/preliminary-investment-returns) In 2015, PERS and STRS had only 74 percent of what was needed to meet pension obligations. (Pew Charitable Trusts, "The State Pension Funding Gap: 2015," April 2017.) Forcing public pension funds to divest from legal companies engaged in activities that may be politically unpopular places extra pressure on those retirement systems to outperform in other areas, which they haven't been able to do. Unfortunately, it will be taxpayers who will ultimately be responsible if retirement funds fail to cover retiree benefits.

**SAN DIEGO COUNTY BAR ASSOCIATION**

The SDCBA Delegation urges Disapproval of Resolution 02-01-2017 because it interferes with the fiduciary duties of the Board of Administration of the Public Employee Retirement System to make sound investment choices for the benefit of public employees who are investing in and eligible to receive PERS benefits. The duty to provide a sound return on investments necessitates the Board not have purely political dictates imposed on its investment choices. Rather, the Board should be left to exercise its sound discretion to determine whether public sentiment against a border wall makes prudent fiscal sense to withdraw investments in companies whose stock value may be adversely affected by market forces. Also, PERS may have invested in corporate debentures where it stands in a creditor position rather than as an investor in a Corporation – the forced sale of such debentures makes no sense because it only harms the investment and not the Corporation doing business with the federal government concerning the building of a border wall.

This Resolution is also overbroad as to the term "*contributing* to the construction of a wall along the United States' southern border." While the intent of the Resolution appears to be directed towards business entities directly contracting with the federal government for building of "the" border wall, this language extends much further. Under this language, a second tier or further down the line service provider or material supplier could be deemed to have "contributed" to the construction of the border wall by providing support services or materials to those directly or indirectly contracting for construction of the border wall. Also, the term "along the United States' southern border" potentially extends to include any wall constructed in the vicinity of the United States' southern border regardless of whether its intended function is to protect against illegal immigration.

# RESOLUTION 02-02-2017

**DIGEST**
Government: Expanding Definition of Lobbyist
Amends Government Code sections 82039 and 86300 to provide that the definition of lobbyist be expanded for registration and disclosure purposes.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
Similar to Resolution 11-06-2016, which was disapproved.

Reasons:
This resolution amends Government Code sections 82039 and 86300 to provide that the definition of lobbyist be expanded for registration and disclosure purposes. This resolution should be disapproved because it will not achieve its goal of making the effect of money on the political system more transparent.

Current law provides a clear and understandable method for determining who is required to register as a lobbyist for the purpose of reporting earned income and gifts made as well as received, and other disclosures under the law. While perhaps arbitrary, the $2000 threshold in income provides a bright line that distinguishes between lobbyists and others. As it is, based on the current quarterly reporting of lobbying activities by the Secretary of State, there is a wide chasm between the largest lobbying interests in the state, often reporting in the millions of dollars quarterly, and the person who receives several thousands of dollars in a three-month period. In fact, these smaller lobbyists are only discoverable by visiting the Secretary of State's website and are generally not receiving media attention for their efforts. By eliminating the dollar threshold for lobbyist registration, the proposal, if it were to become law, might have the unintended consequence of labeling anyone with a political opinion shared with an elected or administrative official a lobbyist, which would significantly impair the public's and the media's ability to track the work of lobbyists that do influence policy in California.

The California Secretary of State's office regulates gifts and reporting requirements, and makes data available in almost real time. Reducing the threshold from $2000 to "any economic consideration" does not provide clarity or enhanced understanding of who is influencing state policy. In fact, it has the opposite effect by diluting the term lobbyist to include anyone who gets paid to have an opinion that is shared with elected and appointed officials. In an era of concern about the impacts of money on policy, reducing the threshold from $2000 to "any" dollar amount does not advance the conversation about political persuasion and the potential corrupting influence of money in the political and administrative systems.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code sections 82039 and 86300, to read as follows:

§ 82039

(a) "Lobbyist" means either of the following:

(1) Any individual who communicates directly, or through agents, with any elective state official, agency official, or legislative official, to influence legislative or administrative action in exchange for ~~receives two thousand dollars ($2,000) or more in~~ economic consideration, ~~in a calendar month,~~ other than reimbursement for reasonable travel expenses. "Reasonable" shall be defined as "does not exceed the Internal Revenue Service's business travel exemptions or the U.S. General Services Administration's per diem rates for Sacramento, CA."~~, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action~~.

(2) A placement agent, as defined in Section 82047.3.

(b) An individual is not a lobbyist by reason of activities described in Section 86300.

(c) For the purposes of subdivision (a), a proceeding before the Public Utilities Commission constitutes "administrative action" if it meets any of the definitions set forth in subdivision (b) or (c) of Section 82002. However, a communication made for the purpose of influencing this type of Public Utilities Commission proceeding is not within subdivision (a) if the communication is made at a public hearing, public workshop, or other public forum that is part of the proceeding, or if the communication is included in the official record of the proceeding.

§ 86300

The provisions of this chapter are not applicable to:

(a) Any elected or appointed public official acting in his official capacity, or any employee of the State of California or a municipality acting within the scope of his employment; provided that, an employee of the State of California, other than a legislative official, who attempts to influence legislative action and who would be required to register as a lobbyist except for the provisions of this subdivision shall not make gifts of more than ten dollars ($10) in a calendar month to an elected state officer or legislative official.

(b) Any newspaper or other periodical of general circulation, book publisher, radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical, radio or television station) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisement, which directly or indirectly urge legislative or administrative action if such newspaper, periodical, book publisher, radio or television station or individual, engages in no further or other activities in connection with urging legislative or administrative action other than to appear before a committee of the Legislature or before a state agency in support of or in opposition to such action.~~; or~~

(c) An individual who (1) lobbies without payment of compensation or other consideration and makes no disbursement or expenditure for or on behalf of a public official to influence legislative or administrative action other than to pay the individual's reasonable personal travel and living expenses as defined in §82039(a)(1), and (2) limits lobbying activities

to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other public proceedings of state agencies;

(d) A person who appears before the legislature or either house, or standing, special, or interim committee, in response to an invitation; or

(~~e~~e) A person when representing a bona fide church or religious society solely for the purpose of protecting the public right to practice the doctrines of such church.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: California does fairly well in its registration and disclosure requirements for lobbyists, but the scope could be improved. Under existing law, if a lobbyist is receiving under $2,000 a month plus "reasonable" travel, he or she does not have to register as a lobbyist or file a disclosure form. Additionally, "reasonable" is undefined. Those who work for corporations and get 5+ figure salaries and only lobby for under 1/3 of their work time in a month (California Code of Regulations § 18239) of their job can always claim that only up to $1,999.99 of their monthly compensation, plus travel expenses, is for lobbying and get around the disclosure requirements .

The Solution: This resolution removes the $2,000/month threshold to register as a lobbyist and requires everyone who receives compensation to lobby to register, excluding reasonable travel reimbursement, with "reasonable" now being defined and pegged to Federal standards. Two exceptions are added to prevent this expanded definition from encompassing those who should not be subject to the registration and disclosure requirements: (1) Anyone who doesn't get any payment except reimbursement for reasonable travel and living expenses, and limits activities to public appearances, and (2) an individual whose appearance was prompted by an invitation. Those changes to the definition of lobbyist ensure more of those who should be registered as lobbyists are, and prevents it from encompassing those who should not.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE:** Ben Rudin

**RESOLUTION 02-03-2017**

**DIGEST**
Government: Administrative Appeal for Public Access to Information
Amends Government Code section 6258 to provide that people denied access to public information may petition the Attorney General to compel disclosure.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Government Code section 6258 to provide that people denied access to public information may petition the Attorney General to compel disclosure. This resolution should be disapproved because the courts, not the office of the Attorney General, are the appropriate bodies to determine whether or not public records have reasonably been withheld from public disclosure, and it would be an inappropriate use of the Attorney General's police powers to compel production of public records from other governmental agencies.

Currently, the law provides that when a person believes public documents have been inappropriately withheld from disclosure, that person may institute proceedings in the court to enforce his/her right to inspect and/or receive copies of public records. It is the primary function of the third co-equal branch of government to ensure that personal rights are protected, including access to public records. The Attorney General, on the other hand, investigates wrongdoing by parties on behalf of the people of California and should not dilute its police powers to compel production of documents held by other governmental agencies outside of cases that it is prosecuting, or with which the State of California is otherwise involved.

The resolution posits that courts take too long and, regardless of the award of attorney's fees, the court process to gain access to public records is too costly a system to utilize for the review of public records requests. The resolution also claims that utilizing the Attorney General's office to compel production of documents would be a quicker and less costly alternative. This conclusion is unfounded. There is no indication that the office of the Attorney General has the resources or expertise to undertake these investigations. The courts already are and do within the limited resources they have. The Attorney General's office would incur costs and, without additional funding, would be saddled with the choice of prosecuting public records request appeals or its ongoing caseload consisting of human trafficking cases, exploitation of the elderly, and other legal issues of statewide significance. This is an untenable position in which to put the Attorney General. Even if the Attorney General's office had sufficient resources to enlarge its scope of work, representing individuals and/or preparing judicial opinions is not within its police powers and is in direct conflict with its purpose and mission, which is to "provide high quality, impartial forensic service in the interest of public safety and justice."

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 6258, to read as follows:

§ 6258

Any person may:

(a) I~~i~~nstitute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time; or

(b) Petition the Attorney General to review the matter to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with any California law concerning access to public records. The determination shall be made within fifteen (15) calendar days after the submission of the petition. If the Attorney General determines that the record may not be withheld or that the public body is otherwise not in compliance, the public body shall be ordered to disclose the record immediately or otherwise comply. If the public body continues to withhold the record or remain in noncompliance, the person seeking disclosure or compliance may (1) bring suit in any court of competent jurisdiction, or (2) without waiving any right to bring suit, request in writing that the Attorney General bring suit in the name of the state in any court of competent jurisdiction for the same purpose. If such request is made, the Attorney General shall have fifteen (15) calendar days to decide whether to bring suit. If, within those fifteen (15) days, the Attorney General decides to bring suit, he or she shall have seven (7) calendar days to file suit. The requester shall have an absolute right to intervene as a full party in the suit at any time. No Attorney General determination shall result in disclosure or compliance being ordered from the judicial or legislative branches of state government, or any entity, officer, or employee of those branches, or the Governor or the Office of the Governor, but the Attorney General shall have the power to bring suit against them.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: California is sorely lacking in providing public access to information. Whenever a government official denies a Californian access to information, the only remedy is to go through the court system. Although attorney fees are reimbursed upon prevailing, tons of money and years of waiting and energy may be spent just to get to that point. Challenging a denial of public information should not be such a daunting task that can deter people who do not have the means, or who need information sooner than the years that the litigation process can take.

The Solution: This resolution offers an efficient alternative to the court process. The person denied access may instead appeal to the Attorney General to determine whether a violation of

our rights to public records has occurred and if so, order the respective government agency to disclose the record immediately. The process can be resolved quicker and much cheaper than through the courts.

**IMPACT STATEMENT**
This resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE:** Ben Rudin

# RESOLUTION 02-04-2017

**DIGEST**
Taxation: Exemption of Fire Equipment from Sales Tax
Adds Revenue and Taxation Code section 6383 to provide that fire equipment bought by fire departments is not subject to a sales tax.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution adds Revenue and Taxation Code section 6383 to provide that fire equipment bought by fire departments is not subject to a sales tax. This resolution should be disapproved because state and local governments will lose funding.

Current law provides that local government agencies are subject to sales and use taxes unless specifically exempted. By law, the current state sales tax is allocated between the State General Fund, realignment of local public safety services, repayment of Economic Recovery Bonds, school and community college funding, local governments for health, welfare, and public safety services and programs, and cities and counties. (Sen. Comm. Governance and Finance Report on S.B. No. 120 (Anderson) (Reg. Sess. 2015-2016).)

This resolution does not reimburse local governments for the sales tax loss which would result in a loss of revenues of millions of dollars to the state and local governments. This is especially true if a fire department purchases its equipment from a different agency. For example, if Fire District A buys its equipment from City B, although Fire District A will save money, the State, county, and City B will lose money because they will not receive the sales tax revenue. Since the sales tax is levied by the State, cities and counties, any exemption for the tax will mean a loss in revenues to all of those entities. Thus, the State, city, and county governments would subsidize the purchase of fire equipment. There is also no reason that fire departments and fire equipment should receive such subsidies when other government purchases do not receive these same subsidies.

This resolution is similar to S.B. No 1367 (Anderson 2014) and S.B. No. 120 (Anderson and Jones 2015) both of which died in committee.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add Revenue and Taxation Code section 6383 to read as follows:

§ 6383

(a) Gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, fire equipment bought by a local fire department shall be exempted from the taxes imposed by this part.

(b) For purposes of this section:

(1) "Local fire department" means any of the following:

(A) A fire department that is under the jurisdiction of the state, a city, county, or city and county, a township, special district, or other local government agency.

(B) A fire company in an unincorporated town organized under Section 14825 of the Health and Safety Code.

(C) A fire protection district formed under the Fire Protection District Law of 1987, Part 2.7 (commencing with Section 13800) of Division 12 of the Health and Safety Code.

(D) A volunteer fire department as described in subdivision (b) of Section 213.7.

(2) "Fire equipment" includes, but is not limited to:

(A) Authorized emergency vehicles as defined in Section 165 of the Vehicle Code.

(B) Equipment and supplies bought by a local fire department and used in connection with official duties in response to emergency conditions and for the protection of the public's health, safety, and welfare.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: California is prone to wildfires. That is not news to anyone. What may be news is that whenever local fire departments buy fire equipment, they have to pay sales tax on it. That makes buying life-saving equipment harder for our fire departments, which makes them less equipped to handle wildfires.

The Solution: By exempting fire equipment, bought by local fire departments, from the sales tax, fire equipment will be cheaper and easier for them to buy, and will better enable them to handle wildfires.

**IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

AB 2758 (1994), AB 1884 (2000), AB 1826 (2002) SB 1126 (2004), AB 1890 (2008), SB 1367 (2014), SB 120 (2015).

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**RESOLUTION 02-05-2017**

**DIGEST**
Government: Fixing Legislative Conflict of Interest
Amends Government Code section 8920 to refine prohibitions on when a legislator may vote or accept something of value.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
Similar to Resolution 11-08-2016, which was withdrawn.

Reasons:
This resolution amends Government Code section 8920 to refine prohibitions on when a legislator may vote or accept something of value. This resolution should be disapproved because it is duplicative of existing law, it is vague and potentially over-broad, and it fails to state a need based on factual problems or circumstances.

The resolution would amend Government Code section 8920 in two ways. First, it would amend subdivision (b) related to the acceptance of employment by a legislator that would impair the legislator's independence when casting a vote, to, instead, limit the solicitation or acceptance of "anything of value." That is duplicative of subdivision (a) which states that, "No Member of the Legislature… shall, while serving as such, have *any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his [or her] duties in the public interest…"* (Emphasis added.) Subdivision (b) is intentionally linked to employment because it is a condition not contemplated in subdivision (a). Additionally, subdivision (a) presents clearer language than the proposed "anything of value that is of such a character…," which is vague and by its nature overly broad.

The resolution also seeks to amend subdivision (b)(5), which currently allows a member to vote on an action even if he/she has a personal interest if that interest is disclosed. The resolution would disallow any vote in which the member has an "individualized pecuniary interest." While the statement of reasons casts suspicions on legislators, it provides no data that votes are taken, frequently or otherwise, to curry favor or which have resulted in personal enrichment. As such, the resolution does not state a clear need. There are 40 members of the State Senate and 80 members of the State Assembly. Without data, it is unreasonable to presume that legislators are voting for their own interests rather than for the benefit of the people of the state. Moreover, it is unlikely that a potentially self-interested vote would have prejudicial outcomes for the state of California. In fact, the opposite is true; if a vote count is so close that a single vote makes a difference in the outcome, clearly there are two potentially strong positions that face our elected representatives. A single vote is not, then, evidence of corruption. It is also important to note that the vast majority of bills require a simple majority, even when voting for the state budget. It is highly uncommon for any vote to come down to the intrigues and interests of a single potentially interested vote.

Finally, the resolution questions the likelihood that a member will recuse him/herself for interest. The difference between existing law and the proposed change is that existing law would allow a member to vote upon notification of his/her interest, whereas the proposal would not allow the member to vote but still requires a member to notify leadership of a potential interest in the issue. It is reasonable to presume that a legislator would be less likely to notify leadership of his/her interest and therefore lose the ability to vote than, as exists under the current paradigm, preserve the right to vote with appropriate notice to the rest of the voting members and the public.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 8920, to read as follows:

§ 8920

(a) No Member of the Legislature, state elective or appointive officer, or judge or justice shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state.

(b) No Member of the Legislature shall do any of the following:

(1) Solicit or ~~A~~accept ~~other employment~~ anything of value ~~which he has reason to believe will~~ that is of such a character to either impair his independence of judgment as to his official duties or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties.

(2) Willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or use any such information for the purpose of pecuniary gain.

(3) Accept or agree to accept, or be in partnership with any person who accepts or agrees to accept, any employment, fee, or other thing of monetary value, or portion thereof, in consideration of his appearing, agreeing to appear, or taking any other action on behalf of another person before any state board or agency.

This subdivision shall not be construed to prohibit a member who is an attorney at law from practicing in that capacity before any court or before the Workers' Compensation Appeals Board and receiving compensation therefor. This subdivision shall not act to prohibit a member from acting as an advocate without compensation or making inquiry for information on behalf of a constituent before a state board or agency, or from engaging in activities on behalf of another which require purely ministerial acts by the board or agency and which in no way require the board or agency to exercise any discretion, or from engaging in activities involving a board or agency which are strictly on his or her own behalf. The prohibition contained in this subdivision shall not apply to a partnership or firm of which the Member of the Legislature is a member if the Member of the Legislature does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from the transaction. The prohibition contained in this subdivision as it read immediately prior to January 1, 1983, shall not apply in connection with any matter pending before any state board or agency on or before January 2, 1967, if the affected Member of the Legislature was an attorney of record or representative in the matter prior to January 2, 1967. The prohibition contained in this subdivision, as amended and operative on

January 1, 1983, shall not apply to any activity of any Member in connection with a matter pending before any state board or agency on January 1, 1983, which was not prohibited by this section prior to that date, if the affected Member of the Legislature was an attorney of record or representative in the matter prior to January 1, 1983.

(4) Receive or agree to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process, except fees for speeches or published works on legislative subjects and except, in connection therewith, reimbursement of expenses for actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State of California.

(5) Participate, by voting or any other action, on the floor of either house, in committee, or elsewhere, in the passage or defeat of legislation in which he has an ~~personal~~ individualized pecuniary interest.~~, except as follows:~~ In those situations,

~~(i) If, on the vote for final passage by the house of which he is a member, of the legislation in which he has a personal interest, he first files a statement (which shall be entered verbatim on the journal) stating in substance that he has a personal interest in the legislation to be voted on and, notwithstanding that interest, he is able to cast a fair and objective vote on that legislation, he may cast his vote without violating any provision of this article.~~

~~(ii) If the member believes that, because of his personal interest, he should abstain from participating in the vote on the legislation,~~ he shall so advise the presiding officer prior to the commencement of the vote and shall be excused from voting on the legislation without any entry on the journal of the fact of his personal interest. In the event a rule of the house requiring that each member who is present vote aye or nay is invoked, the presiding officer shall order the member excused from compliance and shall order entered on the journal a simple statement that the member was excused from voting on the legislation pursuant to law.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: California legislators rarely, if ever, recuse themselves from voting. One may wonder why, until one looks at the law governing it. Although the law prohibits legislators from taking part in government decisions where they have a "personal interest," an exception swallows the rule: the legislator just needs to say in writing that he or she still believes casting an objective vote is possible. Additionally, legislators are prohibited from accepting other employment that he or she has reason to believe will impair his or her judgment, but not from taking money or anything else of value that is of such a character.

The Solution: This resolution removes the ability for a legislator to get around recusal requirements by claiming he or she can still cast a fair and objective vote. It also ends the vagueness of "personal interest" and changes it to "individualized pecuniary interest." It also prohibits a legislator from soliciting or accepting anything of value that is of such a character to impair his or her judgment.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

**AUTHOR AND/OR PERMANENT CONTACT:** Ben Rudin, 3830 Valley Centre Dr., Ste. 705 #231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

**RESPONSIBLE FLOOR DELEGATE:** Ben Rudin

**RESOLUTION 02-06-2017**

**DIGEST**
Judicial Districts: Deletion of Obsolete References
Amends Code of Civil Procedure section 38 to delete obsolete references to municipal courts.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
APPROVE IN PRINCIPLE

History:
Similar to Resolution 11-05-2014, which was approved in principle.

Reasons:
This resolution amends Code of Civil Procedure section 38 to delete obsolete references to municipal courts. This resolution should be approved in principle because it removes references to municipal courts and municipal court districts, neither of which exists in California.

In 1998, California voters passed Proposition 220 (June 1998 Primary Election), which amended the California Constitution and made additional conforming changes that permitted the judges of superior and municipal courts in a county to consolidate if a majority of the judges voted to consolidate. By 2002, the courts in all 58 counties were consolidated and California voters approved Proposition 48 (Nov. 2002 Gen. Election) amending the California Constitution to delete references to the municipal courts as obsolete due to consolidation.

This resolution deletes obsolete references to the municipal courts and municipal court districts that remain in Code of Civil Procedure section 38. The deletion is consistent with the structure of the California judicial branch as determined by California voters who eliminated municipal courts in California.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 38 to read as follows:

§ 38

Unless the provision or context otherwise requires, a reference in a statute to a judicial district means:

(a) As it relates to a court of appeal, the court of appeal district.

(b) As it relates to a superior court, the county.

~~(c) As it relates to a municipal court, the municipal court district.~~

~~(d) As it relates to a county in which there is no municipal court, the county.~~

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County

**STATEMENT OF REASONS**

The Problem: Currently, Code of Civil Procedure section 38, in its provisions regarding Judicial Districts, refers to municipal court, when there are no longer such courts, such that subdivisions (c) and (d) thereof are surplusage.

The Solution: This resolution would eliminate the subdivisions of section 38 that refer to municipal court.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR RELATED LEGISLATION**
None known.

**AUTHOR AND/OR PERMANENT CONTACT:** K. Martin White, Esq. P.O. Box 1826 Carlsbad, CA 92018; (760) 434-6787

**RESPONSIBLE FLOOR DELEGATE:** K. Martin White, Esq.

**RESOLUTION 02-07-2017**

**DIGEST**
Appellate Division: Deletion of Redundant Reference
Amends Code of Civil Procedure section 77 to delete a redundant reference to city and county.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Code of Civil Procedure section 77 to delete a redundant reference to city and county. This resolution should be approved in principle because Code of Civil Procedure section 17 subdivision (b)(2) already provides that the term "'County' includes 'City and County,'" making the same reference in section 77 redundant.

Code of Civil Procedure section 77 establishes appellate divisions of the superior courts. Its opening subdivision (a) currently provides, in pertinent part, "In every county and city and county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges."

There are 58 counties in California. Out of those counties, the one anomaly is San Francisco, which is, at the same time, a city and county. Code of Civil Procedure section 17 subdivision (b)(2)'s definition of county accounts for the fact that San Francisco is both a city and county by providing that the definition of county includes a city and county.

This resolution deletes the redundant language "city and county" in subdivision (a) of Code of Civil Procedure section 77, making the code more streamlined and less open to interpretation or misunderstanding.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 77 to read as follows:

§ 77

(a) In every county ~~and city and county~~, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges.

The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state.

The Chief Justice shall designate one of the judges of each appellate division as the

presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the three judges who shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate division of the superior court of a county other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired, in a county other than the county in which the judge resides, the judge shall receive expenses for travel, board, and lodging. If the judge is out of the judge's county overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the Department of General Services. In addition, a retired judge shall receive for the time so served, amounts equal to that which the judge would have received if the judge had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact any other business except business that may be done at chambers by the presiding judge of, the division. A judgment of the appellate division in an appeal shall contain a brief statement of the reasons for the judgment. A judgment stating only "affirmed" or "reversed" is insufficient. The presiding judge shall convene the appellate division when necessary. The presiding judge shall also supervise its business and transact any business that may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal in all cases in which an appeal may be taken to the superior court or the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court.

(f) The powers of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The Judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of, the appellate division.

(h) Notwithstanding subdivisions (b) and (d), appeals from convictions of traffic infractions may be heard and decided by one judge of the appellate division of the superior court.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County

**STATEMENT OF REASONS**

The Problem: Currently, Code of Civil Procedure section 77 in its description of the location of Superior Court Appellate Divisions, refers to "every county and city and county." Civil Code section 17 already provides in subdivision (b)(2), "'County' includes 'city and county."

The Solution: This resolution would eliminate the portion of section 77 that refers to "city and county," leaving only "county."

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE:** K. Martin White, Esq.

**RESOLUTION 02-08-2017**

**DIGEST**
Rules of Court: Evidentiary Objections in Law and Motion
Adds California Rules of Court, rule 3.1307 to provide requirements for evidentiary objections in law and motion.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution adds California Rules of Court, rule 3.1307 to provide requirements for evidentiary objections in law and motion. This resolution should be approved in principle because it conforms current practice for evidentiary objections in summary judgment motions to other motions where evidentiary issues may be of consequence.

Current summary judgment motion practice requires parties submit any written evidentiary objections with the objecting party's opposition or reply or to ensure a court reporter is present to report the oral proceedings if the party chooses to make oral evidentiary objections. However, the procedure is unclear in relation to evidentiary objections on other motions which may require evidentiary decisions by the court. Most reputable counsel already apply the evidentiary objection scheme in summary judgment motions to other motions and on that basis alone, this resolution makes sense and should be approved in principle. Unscrupulous counsel may attempt to take advantage of the lack of proscribed rules and sandbag opposing counsel by raising oral evidentiary objections when there is no court reporter present to report the proceedings. Elimination of that practice would occur with the adoption of this proposed rule, which is an additional ground for approval in principle.

Adopting this resolution also aids in appellate review. The resolution provides a clear practice for written and oral evidentiary objections that ensures an adequate record for review of all motions where such objections are made and ruled on by the trial court. This allows the reviewing court a clean record upon which to assess the evidentiary rulings. It avoids the prospect of the appellate court remanding simply for clarification on evidentiary rulings.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that the Judicial Council add California Rules of Court, rule 3.1307 to read as follows:

Rule 3.1307
(a) A party desiring to make objections to evidence in the papers on a motion must either:
(1) Submit objections in writing as provided in subsection (b) or;

(2) Make arrangement for a court reporter to be present at the hearing. Evidentiary objections not made in writing as provided by this Rule or at the hearing shall be deemed waived.

(b) Unless otherwise excused by the court on a showing for good cause, all written objections to evidence in support of or in opposition to a motion must be served and filed at the same time of the objecting party's opposition or reply papers are served and filed. The written objections must be in the format provided by Rule 3.1354(b).

(c) In granting or denying a motion, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County

**STATEMENT OF REASONS**

The Problem: Although there are specific rules on how to make and rule upon evidentiary objections in motions for summary judgment and anti-SLAPP motion, the law is silent as to all other motions. There needs to be some sort of mechanism in place to give some structure to the attorneys on how to make those objections and guidance for the court on when it needs to rule on those objections, as set forth in the *Los Angeles Lawyer* article Evidently Objectionable (Vivian F. Wang, September 2015).

The Solution: This resolution creates a rule that addresses how and when evidentiary objections can be made and when judges have to rule on those objections. This resolution mirrors the rules concerning evidentiary objections in motions for summary judgment as set forth in Code of Civil Procedure section 437c and California Rules of Court, rule 3.1352, et. seq.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

**AUTHOR AND PERMANENT CONTACT:** Melissa L. Bustarde, Esq., Mayfield Bustarde, LLP, 462 Stevens Ave., Suite 303, Solana Beach, CA 92075, (858) 793-8090

**RESPONSIBLE FLOOR DELEGATE:** Melissa L. Bustarde, Esq.

**RESOLUTION 02-09-2017**

**DIGEST**
Unlawful Detainer: Summary Judgment Procedures
Amends California Rules of Court, rule 3.1351, to clarify procedures on summary judgment or summary adjudication in unlawful detainer proceedings.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
APPROVE IN PRINCIPLE

History:
Related to Resolution 04-01-2016, which was approved in principle.

Reasons:
This resolution amends California Rules of Court, rule 3.1351, to clarify procedures on summary judgment or summary adjudication in unlawful detainer proceedings. This resolution should be approved in principle because it recommends conforming changes consistent with Resolution 04-01-2016, which was approved in principle.

Current summary judgment motion practice in unlawful detainer proceedings is governed by Code of Civil Procedure sections 1010.6 or 1013 and 1170.7, along with California Rules of Court, rule 3.1351. Current procedure requires a minimum of five days of notice for the motion. (Code Civ. Proc., § 1170.7.) Under California Rules of Court, rule 3.1351, opposition and reply may be made orally at the hearing, or written opposition may be submitted if filed and served one court day before the hearing.

In 2016, the Conference voted to approve in principle Resolution 04-01-2016, which would expand the notice for summary judgment motions in unlawful detainers to 16 calendar days, require written opposition filed seven days before the hearing and written reply filed the day before the hearing. At present Resolution 04-01-2016 has not yet been introduced as pending legislation nor has it been enacted. If Resolution 04-01-2016 were passed into law, conforming changes to California Rules of Court, rule 3.1351 would be required and this resolution addresses those needed conforming changes. Accordingly, this resolution should be approved in principle and placed with the CCBA legislative advocate for coordination with Resolution 04-01-2016.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Association recommends that the Judicial Council amend California Rules of Court, rule 3.1351, to read as follows:

Rule 3.1351
Motions for summary judgment in a summary proceeding involving possession of real property
(a) Notice
In an unlawful detainer action or other action brought under chapter 4 of title 3 of part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a motion for summary

judgment must be given in compliance with Code of Civil Procedure sections 1010.6 or 1013 and 1170.7.

(b) Notice to Parties

The Notice of Motion for Summary Judgment or Summary Adjudication must include the following in 14 point font as the first section:

NOTICE! This Motion for Summary Judgment or Summary Adjudication may determine your case without a trial. The court may decide against you without your being heard unless you file a written Opposition to this Motion at least 7 calendar days before the hearing. A letter or phone call will not protect you. Your written Opposition must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your Opposition. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you.

If you do not file your Opposition on time, you may lose the case, and you may be evicted from your domicile and your wages, money, and property may be taken without further warning from the court.

You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

(~~b~~c) Opposition and R~~r~~eply at hearing

Any opposition to the motion must be in writing and filed at least 7 calendar days before the hearing date. ~~and~~ Any reply to an opposition must be in writing and filed at least 1 court day before the hearing date. ~~may be made orally at the time of hearing or in writing as set forth in (c). Written opposition in advance of hearing~~

~~If a party seeks to have a written opposition considered in advance of the hearing, the written opposition must be filed and served on or before the court day before the hearing~~ Failure to comply with this requirement to file a written opposition may constitute a sufficient ground, in the court's discretion, for granting the motion for summary judgment or adjudication.

(d) Service of Opposition and Reply to Opposition on Other Parties

Service of the Opposition and Reply to Opposition must be by personal delivery, facsimile transmission, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties no later than the close ~~of business on the court day before the hearing~~ of the next business day after the time the opposing papers or reply papers, as applicable, are filed. The court, in its discretion, may consider written opposition filed later.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County.

**STATEMENT OF REASONS**

The Problem: Resolution 04-01-2016, passed by the conference last year, modified the dates for motions for summary judgment or adjudication in unlawful detainer actions. However, there is a rule of court that contains the old language.

The Solution: This would update the Rule of Court to be consistent with the revised Code of Civil Procedure §1170.7 (if passed by the legislature). The proposed changes include a new notice requirement for the notice of motion to warn the party against whom the motion is directed of the serious nature of the motion. The new time for filing and serving the motion for summary judgment and filing the opposition will allow the opposing party to consult and retain legal counsel.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

**AUTHOR AND/OR PERMANENT CONTACT:** Wayne Templin, 144 E. Washington Ave., Escondido, CA 92025; (760) 743-0222.

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**RESOLUTION 02-10-2017**

**DIGEST**
Judges: Judicial Disclosure and Ruling on Disqualification Motion
Adds Code of Civil Procedure section 170.10 to require judges to disclose personal connections and prohibit a challenged judge from ruling on disqualification.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution adds Code of Civil Procedure section 170.10 to require judges to disclose personal connections and prohibit a challenged judge from ruling on disqualification. This resolution should be disapproved because it is vague and there is no evidence that there is a problem in need of a remedy.

The resolution would require a judge to disclose any personal connections between him/herself and any of the parties and their counsel, and further, would bar the judge from ruling on a motion for his/her disqualification. First, the resolution is vague. There is no definition provided for what "any personal connection" might mean. If the language is intended to be interpreted broadly, in small and more rural counties, a judge might likely be expected to disclose that his/her children are in the same school as the children of counsel, or that the judge and one of the parties shops at the same grocer. This leads to unreasonable burdens on the judges and, by extension the courts, for very little information that is of value.

The proposed resolution is also unnecessary. If the resolution seeks to protect one of the parties from being prejudiced by "any personal connection" between the judge and the other party, Code of Civil Procedure section 170.1 sets out nine distinct circumstances when a judge must recuse him/herself from hearing a case, including when it serves the interests of justice. If a judge is recused by one of the parties upon a showing of interest in violation of Code of Civil Procedure section 170.1, section 170.3, subdivision (c)(5) states, "A judge who refuses to recuse himself shall not pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of disqualification filed by a part." As such, the addition of proposed section 170.10, subdivision (b) could be viewed as duplicative of existing law.

Finally, the resolution's statement of reasons fails to describe any need that would justify additional statutory regulation in this area. There does not appear to be any widespread problem with judicial officers not being excused when appropriate, or serving with prejudice. In the absence of such data, it would be a burden, especially on the judicial officers serving in the majority of small courts in California, to require a judge to express "any personal connection" to one of the parties or counsel in the action before that judge in light of the likelihood that, in smaller courts, judges have a personal connection with all or many attorneys who have regular law practices in their communities.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add Code of Civil Procedure section 170.10 to read as follows:

§ 170.10

(a) Upon assignment of a case for trial, the trial judge shall disclose any personal connections between the judge and any of the parties and their attorneys.

(b) The trial judge assigned shall not rule on any motion to disqualify that judge.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County

**STATEMENT OF REASONS**

The Problem: Current law does not require a judge to disclose any personal connections between the judge and any of the parties or their attorneys. Personal connections between the judge and one of more of the parties or their attorneys may reveal a basis for disqualification or reason why a party may want to file a preemptory challenge.

Current law allows the challenged judge to rule on the motion to disqualify that judge. Having another judge rule on the motion for disqualification provides a more neutral decision maker for this decision.

The Solution: This resolution requires a trial judge to disclose personal connections with parties and lawyers and prohibiting a challenged judge from ruling on disqualification.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION:**
None known.

**AUTHOR AND PERMANENT CONTACT:** Carla DiMare, Esq., P.O. Box 1668, Rancho Santa Fe, California 92067, (858) 775-0707

**RESPONSIBLE FLOOR DELEGATE:** David R. Moore, Moore & Skiljan, 7700 El Camino Real, Ste. 207, Carlsbad, CA 92009; 760-944-7700 x1

**RESOLUTION 02-11-2017**

**DIGEST**
Rules of Court: Citation to Appellate Opinions
Amends California Rules of Court, rule 8.1105, and deletes rules 8.1110, 8.1115, 8.1120, and 8.1125, to publish all Courts of Appeal opinions and eliminate Appellate Division publication.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
Similar to Resolution 09-01-2005, which was approved as amended, Resolution 09-02-2005, which was withdrawn, Resolution 01-03-2015, which was disapproved, and Resolution 11-02-2016, which was approved in principle.

Reasons:
This resolution amends California Rules of Court, rule 8.1105, and deletes rules 8.1110, 8.1115, 8.1120, and 8.1125, to publish all Courts of Appeal opinions and eliminate Appellate Division publication. This resolution should be disapproved because it eliminates the existence of legal decisions that can only occur in appellate divisions, dilutes the value of the appellate process, and will place an unnecessary additional burden on the courts.

Under current law, unpublished California appellate decisions can only be cited to or relied on for very limited reasons. While this can be frustrating, the alternative proposed by this resolution will cause more problems than it solves. By entirely eliminating opinions from appellate divisions, this resolution effectually eliminates areas of law that can only be adjudicated in appellate divisions, e.g. traffic infractions and unlawful detainers. Although these are niche areas of the law, if none of their appellate division decisions can be cited in subsequent cases, then parties and the courts will have to make ad hoc arguments and decisions based solely on statutory language. This will create legal uncertainty and result in inconsistent judicial rulings.

Additionally, if all appellate opinions must be published, the value of those opinions will be diluted. Every case has unique facts, and often decisions turn on the specific facts of a case. If every appellate opinion could be cited as law, parties and the courts would be burdened with detailing and distinguishing minor factual differences between prior cases, rather than evaluating the substantive law as it applies to the pending case. Likewise, with the proposed changes, appellate courts would have to unnecessarily spend time drafting detailed opinions on cases that do not impact any substantive law.

Finally, this resolution would prohibit the de-publication of appellate opinions, even if California's Supreme Court subsequently determined that an opinion was erroneous. This would create greater confusion in the law, especially for parties in pro per, because appellate opinions would remain published, and on their face appear to be good law, even after being overturned by the Supreme Court.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that the Judicial Council amend California Rules of Court, rule 8.1105, and delete rules 8.1110, 8.1115, 8.1120, and 8.1125 to read as follows:

Rule 8.1105

(a) Supreme Court All opinions of the Supreme Court are published in the Official Reports.

(b) Courts of Appeal ~~and appellate divisions Except as provided in (c), an~~ All opinions of a Court of Appeal ~~or a superior court appellate division is~~ are published in the Official Reports ~~if a majority of the rendering court certifies the opinion for publication before the decision is final in that court~~.

(c) Appellate Divisions of Superior Courts Opinions of superior court appellate divisions are not to be published in the Official Reports.~~**Standards for certification** An opinion of a Court of Appeal or a superior court appellate division - whether it affirms or reverses a trial court order or judgment - should be certified for publication in the Official Reports if the opinion:~~

~~(1) Establishes a new rule of law;~~

~~(2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions;~~

~~(3) Modifies, explains, or criticizes with reasons given, an existing rule of law;~~

~~(4) Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule;~~

~~(5) Addresses or creates an apparent conflict in the law;~~

~~(6) Involves a legal issue of continuing public interest;~~

~~(7) Makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law;~~

~~(8) Invokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a recently reported decision; or~~

~~(9) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and publication of the majority and separate opinions would make a significant contribution to the development of the law.~~

~~(d) Factors not to be considered Factors such as the workload of the court, or the potential embarrassment of a litigant, lawyer, judge, or other person should not affect the determination of whether to publish an opinion.~~

~~(e) Changes in publication status~~

~~(1) Unless otherwise ordered under (2):~~

~~(A) An opinion is no longer considered published if the rendering court grants rehearing.~~

~~(B) Grant of review by the Supreme Court of a decision by the Court of Appeal does not affect the appellate court's certification of the opinion for full or partial publication under rule 8.1105(b) or rule 8.1110, but any such Court of Appeal opinion, whether officially published in hard copy or electronically must be accompanied by a prominent notation advising that review by the Supreme Court has been granted.~~

~~(2) The Supreme Court may order that an opinion certified for publication is not to be published or that an opinion not certified is to be published. The Supreme Court may also order~~

depublication of part of an opinion, at any time after granting review.

(f) Editing

(1) Computer versions of all opinions of the Supreme Court and Courts of Appeal must be provided to the Reporter of Decisions on the day of filing. Opinions of superior court appellate divisions certified for publication must be provided as prescribed in rule 8.887.

(2) The Reporter of Decisions must edit opinions for publication as directed by the Supreme Court. The Reporter of Decisions must submit edited opinions to the courts for examination, correction, and approval before finalization for the Official Reports.

Rule 8.1110

(a) Order for partial publication A majority of the rendering court may certify for publication any part of an opinion meeting a standard for publication under rule 8.1105.

(b) Opinion contents The published part of the opinion must specify the part or parts not certified for publication. All material, factual and legal, including the disposition, that aids in the application or interpretation of the published part must be published.

(c) Construction For purposes of rules 8.1105, 8.1115, and 8.1120, the published part of the opinion is treated as a published opinion and the unpublished part as an unpublished opinion.

Rule 8.1115

(a) Unpublished opinion Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.

(b) Exceptions An unpublished opinion may be cited or relied on:

(1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or

(2) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

(c) Citation procedure On request of the court or a party, a copy of an opinion citable under (b) must be promptly furnished to the court or the requesting party.

(d) When a published opinion may be cited A published California opinion may be cited or relied on as soon as it is certified for publication or ordered published.

(e) When review of published opinion has been granted

(1) *While review is pending* Pending review and filing of the Supreme Court's opinion, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter has no binding or precedential effect, and may be cited for potentially persuasive value only. Any citation to the Court of Appeal opinion must also note the grant of review and any subsequent action by the Supreme Court.

(2) *After decision on review* After decision on review by the Supreme Court, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter, and any published opinion of a Court of Appeal in a matter in which the Supreme Court has ordered review and deferred action pending the decision, is citable and has binding or precedential effect, except to the extent it is inconsistent with the decision of the Supreme Court or is disapproved by that court.

(3) *Supreme Court order* At any time after granting review or after decision on review, the Supreme Court may order that all or part of an opinion covered by (1) or (2) is not citable or has a binding or precedential effect different from that specified in (1) or (2).

~~Rule 8.1120~~

~~(a) Request~~

~~(1) Any person may request that an unpublished opinion be ordered published.~~

~~(2) The request must be made by a letter to the court that rendered the opinion, concisely stating the person's interest and the reason why the opinion meets a standard for publication.~~

~~(3) The request must be delivered to the rendering court within 20 days after the opinion is filed.~~

~~(4) The request must be served on all parties.~~

~~(b) Action by rendering court~~

~~(1) If the rendering court does not or cannot grant the request before the decision is final in that court, it must forward the request to the Supreme Court with a copy of its opinion, its recommendation for disposition, and a brief statement of its reasons. The rendering court must forward these materials within 15 days after the decision is final in that court.~~

~~(2) The rendering court must also send a copy of its recommendation and reasons to all parties and any person who requested publication.~~

~~(c) Action by Supreme Court The Supreme Court may order the opinion published or deny the request. The court must send notice of its action to the rendering court, all parties, and any person who requested publication.~~

~~(d) Effect of Supreme Court order to publish A Supreme Court order to publish is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion.~~

~~Rule 8.1125~~

~~(a) Request~~

~~(1) Any person may request the Supreme Court to order that an opinion certified for publication not be published.~~

~~(2) The request must not be made as part of a petition for review, but by a separate letter to the Supreme Court not exceeding 10 pages.~~

~~(3) The request must concisely state the person's interest and the reason why the opinion should not be published.~~

~~(4) The request must be delivered to the Supreme Court within 30 days after the decision is final in the Court of Appeal.~~

~~(5) The request must be served on the rendering court and all parties.~~

~~(b) Response~~

~~(1) Within 10 days after the Supreme Court receives a request under (a), the rendering court or any person may submit a response supporting or opposing the request. A response submitted by anyone other than the rendering court must state the person's interest.~~

~~(2) A response must not exceed 10 pages and must be served on the rendering court, all parties, and any person who requested depublication.~~

~~(c) Action by Supreme Court~~

~~(1) The Supreme Court may order the opinion depublished or deny the request. It must send notice of its action to the rendering court, all parties, and any person who requested depublication.~~

~~(2) The Supreme Court may order an opinion depublished on its own motion, notifying the rendering court of its action.~~

~~(d) Effect of Supreme Court order to depublish. A Supreme Court order to depublish is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion.~~

(Proposed new language underlined; language to be deleted stricken)

**PROPONENTS:** Bar Association of San Francisco

**STATEMENT OF REASONS**

The Problem: California's Courts of Appeal issue published and unpublished opinions. But most opinions issued by the courts are unpublished, and some are certified for only partial publication. Many clients and their lawyers believe the courts spend less time drafting unpublished opinions, and they regard unpublished opinions as inferior to published opinions. The perception, shared by many, is that there are two tiers of opinions: the thoroughly researched and well-articulated published opinions, and all the rest, which remain unpublished. Whether or not the perception is accurate, the reality is this situation does a disservice to clients and their lawyers. All litigants are entitled to, and should have confidence they are receiving, a thoroughly thought out, high-quality opinion worthy of publication.

The Solution: California Rules of Court, rule 8.1105 *et seq.*, lays out the rules regarding published and unpublished Court of Appeal opinions. This resolution amends rule 8.1105, and eliminates rules 8.1110, 8.1115, 8.1120, and 8.1125 to provide that all California Court of Appeal (and no superior court appellate division) opinions are to be published in the Official Reports. This resolution would help restore confidence that quality opinions are issued in each and every Court of Appeal case, as each case will be published, and each case may be relied on as precedent. This resolution would also rid the Courts of the need to assess whether to publish an opinion, or part of an opinion, or to respond to counsel's request to publish or depublish an opinion. In addition, this resolution would enhance access by all interested parties access to all Court of Appeal opinions, instead of as now, where some parties (*e.g.*, *pro pers*) may have only limited access to unpublished opinions.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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## COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

### SACRAMENTO COUNTY BAR ASSOCIATION

Resolution 02-11-2017 amends California Rules of Court to require that all opinions issued by the Courts of Appeal be published, and eliminates Appellate Division publication. This resolution should be opposed because in attempting to address one problem it creates another.

The reason for the resolution is that "many clients and their lawyers believe the courts spend less time drafting unpublished opinions, and they regard unpublished opinions as inferior to published opinions. The perception, shared by many, is that there are two tiers of opinions: the thoroughly researched and well-articulated published opinions, and all the rest, which remain unpublished."

Requiring all opinions to be published is not the right solution. Instead, this resolution will dramatically increase the number of cases that judges and attorneys will need to know and research, increasing costs of litigation for all parties, including district attorneys and public defenders. In addition, there may be some cases where the fact patterns don't lend themselves to use for precedent.

Unpublished cases, while not citable, are available to the public. Appellate and Supreme Court Justices are aware of this and should (if they do not already) take care to write well thought-out opinions. Because unpublished opinions are already public, it is unclear how requiring all opinions to be published directly addresses the problem of the quality of written opinions, especially because no argument has been presented that the published opinions are inadequate. Further, no argument has been made that conferring precedential or persuasive value on the many thousands of cases not certified for official report publication would add value to the development of the law. On the other hand, requiring counsel to search for and review all appellate cases, should they all be published, would place undue time and cost burdens on litigants, their counsel, and the courts. In short, this resolution will increase workload and increase costs, without directly addressing the problem it purports to solve.

### SAN DIEGO COUNTY BAR ASSOCIATION

The SDCBA Delegation urges Disapproval of Resolution 02-11-2017 because it will make official reports unwieldy and because it eliminates a critical class of published opinions in the form of Superior Court Appellate Division decisions on areas of law that will rarely if ever be transferred to a Court of Appeal.

The SDCBA Delegation has approved in principle past efforts to allow citation to unpublished appellate court decisions as persuasive authority especially since there may be an unpublished

decision closer on all fours than treatises or other secondary authority that may be cited as persuasive authority. This Resolution, however, goes too far. According to the 2016 Court Statistics Report, our Courts of Appeal disposed of 9583 cases by written opinion in Fiscal Year 2015 and 9780 in Fiscal Year 2014 (p. 34) with 9% of the Fiscal Year 2015 opinions published (p. 27). Requiring publication of an additional 91% of close to 10,000 opinions per year will have undetermined cost consequences on already expensive legal research sources.

However, the larger problem with this Resolution is its elimination of Superior Court Appellate Division opinions from publication. Certain areas of the law like traffic infractions and unlawful detainer proceedings are exclusively or almost always addressed by the Appellate Divisions of the Superior Courts. The small number of published Appellate Division opinions often represent the only case law interpreting pertinent statutes and regulations that are of import to these areas of the law. This Resolution would eliminate that critical class of opinions that may now be cited by parties.

**RESOLUTION 02-12-2017**

**DIGEST**
Local Government: Prohibition on Acquisition of Federal Surplus Property
Amends Government Code section 54141 and adds sections 54145 and 54956.97 to prohibit a local agency from receiving federal surplus military equipment without an affirmative vote of the legislative body of the local agency.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
Similar to Resolution 07-07-2015, which was approved in principle.

Reasons:
This resolution amends Government Code section 54141 and adds sections 54145 and 54956.97 to prohibit a local agency from receiving federal surplus military equipment without an affirmative vote of the legislative body of the local agency. This resolution should be disapproved because there is no evidence that local agencies are buying military surplus equipment for improper purposes, it is over broad, and unnecessarily adds another layer of bureaucracy.

Current law allows local agencies to acquire certain surplus military and other federal property and equipment without requiring public hearings as is the case for the acquisition of non-federal or military equipment such agencies purchase on a regular basis to do their jobs. There is no evidence that law enforcement agencies are abusing the right to obtain such equipment or that once they receive the equipment the agencies use it in a way that harms the public.

This resolution is also overbroad. Although the proponent may be thinking of military tankers, the resolution also include basic weapons and ammunition that police departments use on a daily basis that must be approved by the local legislative body. There is no reason to subject such purchases to legislative approval because the law does not require similar purchases to be approved by the legislative body if they are not bought from the federal government, but from a private company. Buying such equipment from the federal government or the military might be the least expensive option or have the highest quality.

This resolution is similar to Assembly Bill No. 36 (Campos) (Reg. Sess. 2014) which Governor Brown vetoed. It is also similar to Senate Bill No. 242 (Monning) which added section 38004.5 to the Education Code and was enacted into law effective January 1, 2016. Education Code section 39004.5 requires a school district's police department to obtain approval from its governing board prior to receiving federal surplus military equipment.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 54141 and to add sections 54145 and 54956.97 to read as follows:

§ 54141

As used in this article:

(a) "Local agency" means county, city, whether general law or chartered, city and county, town, school district, municipal corporation, ~~or public~~ district, political subdivision, or any board, commission, or agency thereof, or other local public agency.

(b) "United States" includes any department, board, or agency thereof.

(c) "State" includes any department or agency thereof.

(d) "Legislative body" means a legislative body as defined in Section 54952.

(e) (1) "Surplus military equipment" means equipment made available to a local agency pursuant to Section 2576a of Title 10 of the United States Code.

(2) "Tactical surplus military equipment" means surplus military equipment identified on the list developed and maintained by the state coordinator pursuant to subdivision (e) of Section 54145.

(f) "State coordinator" means the state agency that has signed a current memorandum of agreement with the federal Defense Logistics Agency for the purpose of administering a state program for acquiring surplus military equipment.

§ 54145

(a) A local agency shall not apply to receive tactical surplus military equipment unless the legislative body of the local agency approves the acquisition of tactical surplus military equipment by ordinance or resolution, pursuant to subdivision (b), at a regular meeting held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950)).

(b) The legislative body of a local agency may adopt an ordinance or resolution authorizing the local law enforcement agency in that jurisdiction to apply for tactical surplus military equipment. The ordinance or resolution shall comply with both of the following requirements:

(1) The ordinance shall include a list of the types of tactical surplus military equipment that the legislative body authorizes the local law enforcement agency to acquire, unless the legislative body considers the ordinance or resolution at a closed session pursuant to Section 54956.97, in which case the ordinance or resolution shall instead state that the local law enforcement agency is authorized to acquire tactical surplus military equipment.

(2) The legislative body shall review the ordinance or resolution at least annually. During the review, the legislative body shall vote on whether to renew the ordinance or resolution authorizing the acquisition of tactical surplus military equipment. If the legislative body does not approve a renewal pursuant to this paragraph, the authorization shall expire.

(c) This section shall not be construed to require the legislative body of a local agency to approve the acquisition of each individual item of tactical surplus military equipment, unless specified by the ordinance or resolution adopted pursuant to subdivision (b).

(d) The Legislature finds and declares that this section constitutes a matter of statewide concern, and shall apply to charter cities and charter counties. The provisions of this section shall

supersede any inconsistent provisions in the charter of any city, county, or city and county.

(e)(1) The state coordinator, by January 31, 2019, shall develop a list of tactical surplus military equipment. The list shall identify surplus military equipment that warrants public input pursuant to this article. The state coordinator shall post this list on its Internet Web site and update it at least annually.

(2) In developing the list required by this subdivision, the state coordinator shall consider the current list of controlled property designated by the federal Defense Logistics Agency, as well as any other state or federal regulations or policies governing the use of surplus military equipment.

(3) The list required by this subdivision shall include, at minimum, the following types of equipment:

(A) Weapons.

(B) Armored vehicles.

(C) Watercraft.

(D) Aircraft.

(E) Other tactical equipment as determined by the state coordinator.

(f) Notwithstanding any other law, a local agency shall not apply to receive the following types of surplus military equipment:

(1) Tracked armored vehicles.

(2) Weaponized vehicles.

(3) Firearms of .50 caliber or greater.

(4) Ammunition of .50 caliber or greater.

(5) Grenade launchers.

(6) Bayonets.

(7) Camouflage uniforms.

§ 54956.97

(a) A legislative body of a local agency may hold a closed session for the purpose of considering an ordinance or resolution authorizing the acquisition of tactical surplus military equipment, as that term is defined in Section 54141, pursuant to Section 54145 if the following conditions are met:

(1) The ordinance or resolution is listed on the agenda of a regular meeting pursuant to Section 54954.2.

(2) A member of the legislative body, during an open session of the regular meeting, makes a motion to consider the ordinance or resolution at a closed session.

(3) Two-thirds of the members of the legislative body concur in the motion.

(4) The closed session complies with the applicable requirements of this chapter.

Legislative Findings:

The Legislature finds and declares that Section 2 of this act, which adds Section 54145 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

Requiring local agencies to hold public meetings prior to the acquisition of federal surplus

military equipment further exposes that activity to public scrutiny and enhances public access to information concerning the conduct of the people's business.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENTS:** Bar Association of San Francisco

**STATEMENT OF REASONS**

The Problem: Existing law allows local law enforcement agencies to obtain surplus military equipment from the federal government without obtaining the approval of the legislative body of the local agency. As noted by Assembly Member Campos: "Due to recent events of police brutality, distrust between law enforcement and many of our communities remains at an all-time high. Further exacerbating the issue is the recent militarization of law enforcement agencies and a movement away from community policing across the nation. . . . [I]n Ferguson, Missouri, the mine-resistant, ambush-protected troop transport, or Mine-Resistant Ambush Protected Vehicle (MRAP), became a focus for debate after this military surplus vehicle and other military equipment were used by local law enforcement to respond to civil unrest over the police killing of unarmed teenager Michael Brown." This is just one example of "where the public felt threatened by military equipment in their communities. . . .[T]he communities involved did not have the opportunity to weigh in before the military equipment was acquired. These situations hurt our most underserved communities by exacerbating their relationship with the police and government. Unilateral decisions by law enforcement agencies to acquire military equipment provide little or no opportunity for community input."

The Solution: This resolution addresses this problem by prohibiting a local agency from applying for "tactical" surplus military equipment unless the agency's legislative body adopts an ordinance or resolution that lists the types of equipment that the agency may acquire. This resolution further (1) Requires the ordinance or resolution to be adopted either: (a) At a regular public meeting subject to the Brown Act, or (b) At a closed session, if all of the following occur: (i) The ordinance or resolution is listed on the agenda of a regular meeting; (ii) A motion in a regular public meeting is approved by two-thirds of the members of the legislative body, to consider the ordinance or resolution at a closed session; (iii) The closed session complies with other requirements of the Brown Act. (2) Requires the ordinance or resolution to be reviewed annually. At that time, the legislative body must decide whether to renew the ordinance, or resolution. If it does not renew the resolution, the authorization to acquire tactical equipment expires. (3) Requires the state coordinator to develop a list of tactical surplus military equipment that includes: (a) Controlled equipment and (b) Consideration of the Defense Logistics Agency's list of controlled property, or other state, or federal regulations, or policies governing the use of surplus military equipment. (4) Disallows all local agencies from acquiring prohibited equipment.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
This resolution is similar to the August 24, 2015 version of AB 36 introduced by Assembly Member Campos. Although a subsequently amended version of AB 36 was vetoed by Governor Brown, this resolution notably differs from the vetoed version. The CCBA passed Resolution 07-07-2015, which was based on the original version of AB 36.

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