

RESOLUTION 09-01-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 27383 to read as follows:

- 1 § 27383
- 2 No fee shall be charged by the recorder for services rendered to the State, to any
- 3 municipality, county in the State or other political subdivision thereof, ~~except for making a copy~~
- 4 ~~of a paper or record.~~

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under existing law, the recorder’s office is prohibited from charging a fee to any state, county, or municipal agency, except for making copies. This results in absurd fees being charged for public entities that wish to obtain a certified or conformed copy of what they have filed. Moreover, when a public employee chooses to pay out of pocket for certified copies and seeks reimbursement from their agency, they must prepare a written justification that undergoes multiple levels of review for approval. Because it can take weeks to get reimbursed, regardless of how trivial the amount, public entities that record documents are disincentivized from keeping certified copies of what they have filed.

The Solution: This resolution would ensure that public agencies are not charged for using any of the services of the recorder’s office, including the pennies that it costs to make a certified copy. This saves time, reduces costs, and encourages public agencies to keep certified copies of their filings.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTION 09-02-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Section 815.2.5 to the Government Code, to read as follows:

1 § 815.2.5

2 (a) This section shall be known, and may be cited as the Unarmed Decedent Law
3 Enforcement Agency Liability and Family Compensation Act of 2024.

4 (b) Law enforcement firearm deployment resulting in the death of an unarmed person
5 shall be compensable for the decedent's eligible surviving family members in a single claim or
6 suit against the agency.

7 (c) Whenever a firearm deployment by an officer of a California state, city, county or city
8 and county law enforcement agency, or by an officer of a University of California police
9 department, a California State University police department, a California Community College
10 police department, or a police department of a school district, or other local or regional law
11 enforcement or public safety agency, in the course and scope of employment, results in the death
12 of an unarmed person, the death shall be rebuttably presumed to be a violation of Penal Code 835

13 which requires the death to be necessary. If shown by the results of a Government Code 12525
14 ((a) mandated California Department of Justice Department of Justice fatal police shooting
15 investigation, or other proof that the fatal shooting was unnecessary, the death shall be rebuttably
16 presumed to be compensable for eligible surviving family members by the agency.

17 (d) For purposes of this section, "eligible surviving family members" shall include a
18 spouse or domestic partner, parents, children, and dependent relatives specified in Code of Civil
19 Procedure Sec. 377.60.

20 (e) A single claim for all eligible claimants may be filed against a California law
21 enforcement agency under this section with the Department of General Services or the local or
22 regional or other law enforcement agency itself within 6 months of receiving notice from that
23 law enforcement agency or other government official of the family member's death as a result of
24 a firearm deployment by an officer or officers of the agency.

25 (f) A compensation claim or lawsuit shall not be filed against any law enforcement
26 agency individual employee, including a peace officer, under this section. A law enforcement
27 agency employee shall appear on written notice at any proceeding brought under this section.

28 (g) If the decedent was not armed with an operational or inoperational firearm, or other
29 deadly weapon, as defined in Gov. Code 12525 subd. (a)(2), nor otherwise presented an
30 imminent threat of great bodily injury or death to the life the officer or another person when
31 fatally shot, the claim against the law enforcement agency shall be approved.

32 (h) Claims may include damages claims for loss of society, pain and suffering (See
33 amended Code of Civ. Proc. Sec. 377.34) and claims for other damages including economic loss
34 recognized by applicable law.

35 (i) The Department of General services or local or regional government entity shall
36 negotiate a compensation amount for approved survivors' compensation claims against a law
37 enforcement agency. In state law enforcement agency cases, the Controller shall certify the
38 negotiated compensation amount for the claimant or representative of a minor or dependent adult

39 claimant. If a negotiated compensation amount cannot be reached, the claim may proceed to state
40 court as a survivor's compensation claim under this section. Compensation, whether negotiated
41 or the result of a judgment against the agency, may be paid in full or on a multi-year schedule as
42 the claimants or representative may elect and agree.

43 (j) Eligible surviving family members shall be entitled to reasonable attorney fees for
44 assistance with preparing, submitting, negotiating, litigating, and securing claims payments.
45 Attorney fee claims shall be documented with contemporaneously compiled records that show
46 hourly rate of attorney compensation, and hours expended.

47 (j) Compensation for a death resulting from a state law enforcement agency firearm
48 deployment shall be paid upon an appropriation for that purpose by the Legislature.

49 (k) If elected, compensation paid under this section shall preclude additional
50 compensation from federal claims for the same fatality.

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

PROPONENT: National Lawyers Guild, San Francisco Bay Area Chapter

STATEMENT OF REASONS

The Problem: Unarmed person fatalities are a significant challenge for family survivors because current law does not lead clearly or efficiently to surviving family members of unarmed decedents getting compensated for their loss. A.B. 1506, which mandates investigations of all fatal police shootings of unarmed persons, took effect July 1, 2021.

Further, the focus of A.B. 1506 (now Gov. Code 12525.3) is whether to bring criminal charges against the officer(s) involved in an unarmed person's fatality which does not lead to family compensation no matter how it is decided.

Furthermore, since Gov. Code 12525.3 took effect, a stunning 33 cases of unarmed fatalities have been opened statewide. These numbers reveal a new look at a deadly problem with California law enforcement agencies because NONE of the thirty three decedents had a deadly weapon in hand or anywhere on their bodies. Why are these 33 unarmed people dead? Agency liability is clearly appropriate. Final Reports have been issued in only three of the 33 cases.

The Solution: A big part of the solution is in this resolution which proposes new state policy in a statute that makes a law enforcement agency liable for compensating surviving close relatives of any unarmed person it shoots to death unnecessarily as a matter of statutory law.

This 2023 version of our resolution has abandoned our previous strict liability approach. Instead, we are now offering an approach that utilizes rebuttable presumptions, an approach which offers agencies the opportunity to argue whether key elements of a recovery by a decedent's survivors have been established. Under this version of our resolution, agencies can argue whether under all the circumstances the fatality was necessary or unavoidable, and whether compensability has been established.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

SB 299 (Leyva) Would enable police fatal shooting survivor claims to be made on the state crime victim's fund. The bill failed passage.

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RESOLUTION 09-03-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Article V, Section 5 of the California Constitution, to read as follows:

- 1 Art. V, § 5
- 2 (a) Unless the law otherwise provides, the Governor may fill a vacancy in office by
- 3 appointment until a successor qualifies.
- 4 (b) Whenever there is a vacancy in the office of the Superintendent of Public Instruction,
- 5 the Lieutenant Governor, Secretary of State, Controller, Treasurer, or Attorney General, or on the
- 6 State Board of Equalization, the Governor shall nominate a person to fill the vacancy who shall
- 7 take office upon confirmation by a majority of the membership of the Senate and a majority of
- 8 the membership of the Assembly and who shall hold office for the balance of the unexpired term.
- 9 In the event the nominee is neither confirmed nor refused confirmation by both the Senate and
- 10 the Assembly within 90 days of the submission of the nomination, the nominee shall take office
- 11 as if he or she had been confirmed by a majority of the Senate and Assembly; provided, that if
- 12 such 90-day period ends during a recess of the Legislature, the period shall be extended until the
- 13 sixth day following the day on which the Legislature reconvenes.
- 14 (c) When a vacancy occurs in the office of United States senator, the governor shall fill
- 15 the vacancy by selecting a person from a list of at least three prospective appointees submitted by
- 16 the same political party as the prior incumbent was when elected or appointed to that office. The
- 17 appointee shall be, at the time of appointment, and shall have been, for at least six months
- 18 immediately prior to the appointment, a member of the same political party as the prior
- 19 incumbent. If the prior incumbent was not a member of any political party, the governor shall
- 20 appoint a person who is not and has not been, for at least six months immediately prior to the
- 21 appointment, a member of any political party.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: When electing the Governor, voters commonly do not consider how it might affect the partisan composition of the U.S. Senate. Currently, the Governor has free reign to select whomever to fill a vacancy for the U.S. Senate, provided such a person is eligible. The Governor should not be able to capitalize on a Senate vacancy by altering the partisan balance of it, up to and including changing which party has the majority.

The Solution: This proposal would ensure that when a U.S. Senate vacancy occurs, the Governor is limited to appointing someone nominated by the political party of the departing Senator when he or she was elected or appointed. Any appointment to fill a vacancy will not affect the balance of the Senate.

IMPACT STATEMENT

This resolution may require additional statutory changes.

CURRENT OR PRIOR RELATED LEGISLATION

No known current or recent similar legislation.

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RESOLUTION 09-04-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Article IV, Sections 2 and 6, of the California Constitution:

1 § 2

2 (a) (1) ~~The Senate has a membership of 40~~ Senators shall be elected for 4-year terms, ~~20~~
3 half of them to begin every 2 years.

4 (2) ~~The Assembly has a membership of 80~~ Assembly members shall be elected for 2-year
5 terms.

6 (3) The terms of a Senator or a Member of the Assembly shall commence on the first
7 Monday in December next following her or his election.

8 (4) During her or his lifetime a person may serve no more than 12 years in the Senate, the
9 Assembly, or both, in any combination of terms. This subdivision shall apply only to those
10 Members of the Senate or the Assembly who are first elected to the Legislature after the effective
11 date of this subdivision and who have not previously served in the Senate or Assembly. Members
12 of the Senate or Assembly who were elected before the effective date of this subdivision may
13 serve only the number of terms allowed at the time of the last election before the effective date of
14 this subdivision.

15 (5) The total members of the Legislature shall be one-tenth (1/10) the population of
16 California raised to the power of 0.42, rounded to the nearest whole number divisible by three
17 (3). Two-thirds (2/3) of that number shall constitute the number of Assembly members, and one-
18 third (1/3) shall constitute the number of Senators. This provision shall take effect starting with
19 the 2032 elections.

20 (b) Election of members of the Assembly shall be on the first Tuesday after the first
21 Monday in November of even-numbered years unless otherwise prescribed by the Legislature.
22 Senators shall be elected at the same time and places as members of the Assembly.

23 (c) A person is ineligible to be a member of the Legislature unless the person is an elector
24 and has been a resident of the legislative district for one year, and a citizen of the United States
25 and a resident of California for 3 years, immediately preceding the election, and service of the
26 full term of office to which the person is seeking to be elected would not exceed the maximum
27 years of service permitted by subdivision (a) of this section.

28 (d) When a vacancy occurs in the Legislature the Governor immediately shall call an
29 election to fill the vacancy.

30
31 § 6

32 For the purpose of choosing members of the Legislature, the State shall be divided into 40
33 ~~Senatorial and 80 Assembly districts to be called~~ Senatorial and Assembly Districts. Each
34 Senatorial district shall choose one Senator and each Assembly district shall choose one member
35 of the Assembly.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: The California Constitution currently fixes the number of state senators at 40 and assembly members at 80. That number of representatives has remained static since the California Constitution of 1879 when California's population was around 864,000 people for ratios of around 1:21,600 for senators and 1:10,800 for assembly members. (Cal. Const., art. IV, § 5 (1879); 1880 Census, vol. 1, table Ia, p. 3.) Since then, California's population has increased 45-fold to around 39,500,000 in 2020 for representation ratios of around 1:987,500 for senators and 1:493,750 for assembly members. As a result, Californians are now some of the least represented citizens in the country as compared to similarly sized states. (See <https://www.ncsl.org/research/about-state-legislatures/number-of-legislators-and-length-of-terms.aspx> [New York, 213 representatives; Florida, 160 representatives; Texas, 181 representatives].) Numerous smaller states have better levels of representation as compared to California. (Id. [Alabama, 140 representatives; Connecticut, 187 representatives; Georgia, 236 representatives; Vermont, 180 representatives].) As a result, Californians have less power to influence their state representatives, and legislators do not need to be as responsive to their constituents..

The Solution: This resolution would create a formula for the expansion or contraction of the size of the Senate and Assembly so it reflects California's population. This resolution proposes that the size of the Legislature be calculated by taking the whole population, as determined by the federal decennial census, raising it to the power of 0.42, dividing it by 10, and rounding it to the nearest whole number divisible by three with 2/3 allocation to the Assembly and 1/3 allocation to the Senate. If implemented right now, it would increase the legislator total to 156 (up from 120), with 104 members of the Assembly (up from 80), and 52 members of the Senate (up from 40). This would allow for a consistent level of representation among California's population, adjusted every 10 years, and in turn make legislators more responsive to their constituents. This would also potentially increase the pool of candidates since costs to mount campaigns would be more affordable with smaller electoral bases.

IMPACT STATEMENT

This resolution may require additional statutory changes. As the number of Senate and Assembly Districts increase or decrease, redistricting would need to occur and elections held to fill any newly created seats.

CURRENT OR PRIOR RELATED LEGISLATION

No known current or recent similar legislation.

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RESOLUTION 09-05-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Fish and Game Code section 2062, to read as follows:

1 § 2062
2 “Endangered species” means a native species or subspecies of a bird, mammal, wild fish,
3 amphibian, reptile, mollusk, crustacean, invertebrate, or part, spawn, or ovum of any of those
4 animals, or plant which is in serious danger of becoming extinct throughout all, or a significant
5 portion, of its range due to one or more causes, including loss of habitat, change in habitat,
6 overexploitation, predation, competition, or disease. Any species determined by the commission
7 as “endangered” on or before January 1, 1985, is an “endangered species.”

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: In “Almond Alliance of California et al, v. Fish and Game Commission et al.,” 294 Cal.Rptr.3d 603 (May 31, 2022), the 3rd District Court of Appeal held: 1) the Fish and Game Code’s general definition of “fish” authorized the Commission to list invertebrates as endangered or threatened species, and 2) the term “fish” was not limited to aquatic species, but, rather, included terrestrial invertebrates.

The Solution: Although the 3rd District Court of Appeal holding is controlling, this Resolution would insert the Fish and Game Code Section 45 definition for “fish” into Section 2062’s list of “endangered species” to codify how qualifying bee species may be protected.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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