

# **For Years To Come:**

A Legislative History of SB 341 and the  
“Public Cemetery District Law”

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**Senate Committee on Local Government, 2003**

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*In this world, nothing is certain except death and taxes.* Benjamin Franklin, 1789

**For Years To Come:**  
**A Legislative History of SB 341 and the Public Cemetery District Law**

Authored by all seven Senators who served on the Senate Local Government Committee in 2003, Senate Bill 341 thoroughly revised the state statutes that govern California's 253 public cemetery districts. Governor Gray Davis signed SB 341 into law as Chapter 57 of the Statutes of 2003. The new law took effect on January 1, 2004.

This report documents the origins and legislative history of the new "Public Cemetery District Law," offering public officials, researchers, legal advisors, and the courts with an understanding of where the new law came from and what its drafters meant to achieve.

Over 90 years ago, the Legislature created public cemetery districts to serve local communities' needs. Revisions in 1921, 1927, and 1939 restructured this statute. Since 1939, nearly 60 bills amended the state laws that create and control these districts.

Without a major overhaul, however, this body of law did not keep pace with other statutory and constitutional changes. The voters amended the California Constitution with Propositions 13, 3, and 218. Voter initiatives created the Political Reform Act and changed local officials' fiscal powers. The Legislature created LAFCOs, and enacted the Ralph M. Brown Act, the Public Records Act, the California Environmental Quality Act, and several laws on special taxes and benefit assessments. Scores of court decisions interpreted these statutes and applied them to local governments. Except for the statutory revisions of the mid-1980s, few of these changes made their way into the public cemetery districts' laws.

SB 341 is the fourth in a series of projects sponsored by the Senate Local Government Committee to revise special districts' principal acts:

- Fire protection districts (SB 515 in 1987).
- Recreation and park districts (SB 707 in 2001).
- Mosquito abatement and vector control districts (SB 1588 in 2002).

In early 2002, while working on the mosquito abatement districts' statutes, the Committee received letters from both the Public Cemetery Alliance and the California Association of Public Cemeteries, asking legislators to next tackle the cemetery district laws. In February 2002, Senator Tom Torlakson, chair of the Senate Local Government Committee, committed to organizing a working group and begin the process of reviewing and revising the existing codes.

In September 2002, Senator Torlakson named a 21-member "Working Group on Revising the Public Cemetery District Law." The Working Group met three times in Sacramento to review the current law, direct the drafting of a replacement statute, and refine the results. The Committee introduced the Working Group's recommendations as SB 341 in February 2003. The bill moved through the legislative process and Governor Davis signed the Committee's bill into law on July 14, 2003. The new law took effect on January 1, 2004.

## Discovering Legislative Intent

Unlike the United State Congress, the California Legislature does not produce extensively detailed legislative histories for its bills. The official record consists of the bills themselves, plus the analyses prepared for the policy committees, fiscal committees, and Senate and Assembly Floors. When interpreting statutes, the California courts rely on rules of statutory construction. One court explained these rules this way:

The most fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Significance if possible should be attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. The various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. Further, wherever possible, the statute will be construed in harmony with the Constitution. The provision must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, and which, when applied, will result in wise policy rather than mischief or absurdity. The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction.

To ascertain the legislative intent behind a statutory amendment, we may rely upon committee reports provided they are consistent with a reasonable interpretation of a statute. Regarding reliance upon statements and letters of individual legislators in construing a statute, we do not consider the motives or understandings of individual legislators who cast their votes in favor of it. Nor do we carve an exception to this principle simply because the legislator whose motives are proffered actually authored the bill in controversy; no guarantee can issue that those who supported his proposal shared his view of its compass. A legislator's statement is entitled to consideration, however, when it is a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than merely an expression of personal opinion. The statute of an individual legislator has also been accepted when it gave some indication of arguments made to the Legislature and was printed upon motion of the Legislature as a letter of legislative intent. Correspondence within the Governor's file from interested parties does not represent the intent of the Legislature... [where] it is neither a statement of the legislator nor a report to the Legislature from the bill's proponents. Nor will the courts give much weight to post-enactment statements by administrators or other public officials to their understanding of the underlying legislative intent, even though such persons may have actively supported the measure and irrespective of the fact that the subject matter of the enactment may have directly involved their official responsibilities under existing law.  
[citations and quotation marks omitted]

*Honey Springs Homeowners Assn v. Board of Supervisors* (1984)  
157 Cal.App. 3d 1122, 1136, footnote 11.

One purpose of this report is to record the efforts of the Working Group on Revising the Public Cemetery District Law and the Senate Committee on Local Government, so that public officials, researchers, potential litigators, and the courts may have access to the thinking that the drafters and authors invested in SB 341.

### **Summary of Policies, Powers, Procedures, and Oversight**

The 2003 Public Cemetery District Law differs from the 1939 statute in dozens of ways. One approach to understanding these changes is to look at the how the bill affects the districts' policy, powers, procedures, and oversight.

Policy. Some bills contain *explicit* policy statements. Specific findings and declarations of legislative intent are the most obvious ways for legislators to send signals to colleagues, constituents, and judges. A bill may enact a new section that overtly recites findings and declarations. Bills that create major programs often place these recitations immediately after the title of the new division. For lesser measures, a legislator may relegate these statements to an uncodified section. On rare occasions, bills state that they incorporate the changes recommended in outside reports, even citing the studies by name.

More often, legislative policy is *implicit*, to be detected and interpreted from the new statute's context. The ways that a bill arranges procedures, defines terms, limits authority, or raises revenues are clues to the author's intent. When a bill's intent is not plain from its own wording, the courts may look at secondary sources, such as committee bill analyses and reports from interim hearings.

The 1939 law did not contain any overt statement of state policy to guide the districts. SB 341 opens with four legislative findings (see Health & Safety Code §9001):

- Californians need respectful and cost-effective ways to inter human remains.
- Public cemetery districts assumed responsibility for cemeteries from other groups.
- Public cemetery districts have provided interment services for nearly a century.
- Customs and practices have changed but the need for public cemeteries continues.

SB 341 then declares the Legislature's intent to create and continue a broad statutory authority for public cemetery districts that can own, improve, expand, and operate public cemeteries that provide respectful and cost-effective interments.

Power. Responsible and effective local governments need enough -- but not too much -- power to carry out their statutory policies. Policies and powers must match. Government power can be both *fiscal* and *regulatory*. If the Legislature sets ambitious policies but fails to provide sufficient power, then administrators can't deliver the program that legislators wanted. Conversely, if the Legislature doesn't explain its policies, then public managers lack guidance on how to use government powers. But Californians and their legislators distrust powerful governments. Legislators search for balance between providing governmental powers that fulfill legitimate public policies and protecting their constituents' rights and incomes.

Responsible and effective local governments need enough (but not too much) power to carry out their statutory policies. The Working Group spent hours scrutinizing the 1939 law and recommending changes. Some of SB 341's specific differences:

- Allow the districts to annex and serve noncontiguous territory (§9007).
- Increase trustees' stipends, subject to local referendum (§9031).
- Restate the powers to own, operate, improve, and maintain cemeteries (§9040).
- Require the districts' to maintain district cemeteries (§9040).
- Spell out the districts' basic corporate powers (§9041).
- Allow the districts to change their names without county approval (§9043).
- Restate the power to sell interment rights (§9049).
- Continue to prohibit the districts from selling monuments (§9052).
- Simplify the districts' real estate powers (§9054-9056).
- Clarify who can be interred in district cemeteries (§9060-9063).
- Restate the requirement for endowment care funds (§9065).
- Tighten the requirements for adopting annual budgets, including reserves (§9070).
- Allow the districts to manage their own finances (§9077).
- Issue general obligation bonds with 2/3 voter-approval (§9082).

Procedures. The reformist impulses of the Progressive Era and several Populist movements are still strong in California government and politics. Californians insist on fair access to decisions and to their decision-makers. State statutes that regulate procedures include the *Brown Act* (local officials' meetings must be open and public), the *Public Records Act* (insuring access to government documents), the *Political Reform Act* (requiring disclosure of economic interests), and a myriad of statutory requirements for public notice, public hearings, protests, and elections.

SB 341 uses a contemporary drafting format, including a modern writing style for easier reading by officials and residents, clusters related topics together for quicker reference, renumbers the entire statute, and leaves room for future amendments. To improve effective administration and political accountability, SB 341 contains cross-references to other major statutes that apply to the districts as well as to other local governments:

- Lawsuits to validate decisions, bonds, and boundaries (§9006).
- Boundary changes under the Cortese-Knox-Hertzberg Act (§9007).
- Open meetings under the Brown Act (§9029).
- Local land use planning and zoning (§9042).
- Formal bidding procedures for supplies and equipment (§9044).
- Employee relations under the Meyers-Milias-Brown Act (§9045).
- Annual appropriations limits under the Gann Initiative (§9072).
- Allocation of property tax revenues (§9073).
- Temporary borrowing for dry period loans (§9074).
- Regular audits and annual financial reports (§9079).
- Special taxes with 2/3 voter-approval (§9081).
- Forming zones to segregate costs and benefits (§9090-9093).

Oversight. Responsive government is accountable government. Spawned in righteous enthusiasm, some public programs outlive their usefulness but continue only because legislators forget about them. Institutional inertia, changing social and political climates, and automatic budgeting can combine to allow archaic and ineffective programs to persist. One of the politically least attractive -- but potentially most powerful -- legislative duties is to oversee existing programs. As the term limits imposed by Proposition 140 accelerate legislative turnover, the legislators who originally authored new laws may not be around to monitor their implementation.

Legislators can avoid creating perpetual programs by insisting that new programs contain oversight mechanisms: *regular records and reports*, *special studies*, and *sunset clauses*. One common practice requires administrators to evaluate a new program after its sixth year. That approach allows program managers to review five years worth of experience. Then the bill's sunset clause repeals the program after the seventh year unless a later statute extends the deadline. This practice forces legislators, legislative staff, program administrators, and interest groups to examine a program, react to its evaluation, and then consider the program's future. Legislative inaction automatically ends the program.

Responsive government is accountable government. SB 341 promotes public accountability and responsiveness with changes that:

- Stagger the district trustees' fixed four-year terms (§9024).
- Clarify county supervisors' power to dismiss district trustees and assume control (§9026).
- Restate the requirement to keep accurate and current interment records (§9064).
- Require stricter handling of budgetary reserves (§9071).
- Require regular audits and annual reports to the State Controller (§9079).

Other provisions. Besides enacting a new statute for the public cemetery districts, SB 341 also makes conforming changes to other state laws:

- Current law allows county officials to use a County Service Area (CSA) to deliver a higher level of any county service to a specific geographic area. State law contains a non-exclusive list of services that CSAs can provide. San Bernardino County has two CSAs that run cemeteries. SB 341 adds interment services to the list of services that CSAs can provide. (Government Code §25210.4a)
- Current law allows public cemetery districts and mosquito abatement and vector control districts to create revolving funds for local expenses. SB 341 corrects the cross-reference to the new Public Cemetery District Law. (Government Code §53961)
- LAFCOs cannot control special districts' internal zones. SB 341 adds the zones of public cemetery districts to this exemption in the Cortese-Knox-Hertzberg Act. (Government Code §56036)
- Cities can seek court approval to declare a plot in a city cemetery abandoned and then resell the burial rights, following the same procedures as cemetery districts. SB 341 inserts the proper cross-reference to the new Public Cemetery District Law. (Health & Safety Code §8136)
- SB 341 notes that the new statute is based on the recommendations of the Working Group on Revising the Public Cemetery District Law. (§6 of the bill)

### **The Working Group**



To rewrite an out-of-date state law requires detailed knowledge about the current statute as well as an appreciation of local customs and practices. A successful revision also requires a willingness to anticipate possible political objections to the recommended changes. With those objectives in mind, Senator Torlakson, the Committee chair, directed the Committee's staff to work towards a near-consensus. In September 2002, Senator Torlakson created a 21-member Working Group on Revising the Public Cemetery District Law consisting of:

Three district trustees:

Hon. Patricia Conway, North County Cemetery District  
 Hon. Primo E. Facchini, Alamo-Lafayette Cemetery District  
 Hon. Melvin McLaughlin, Kern County Cemetery District No. 1

Three district managers:

Anna M. Herrera, Clovis Cemetery District  
 Leonard Pelfrey, Sutter Cemetery District  
 Sam Randall, Orange County Cemetery District

Four specialists in cemetery operations:

Don Foster, retired manager, Summit Cemetery District  
 Mel Lewis, executive vice president, Cordeiro Vault Company  
 David McMurchie, McMurchie Weill Lenahan Lee Slater & Pearse, LLP  
 Mary Nejedly Piepho, former trustee, Union Cemetery District

Eleven representatives of potentially affected groups:

Dewey L. Ausmus, executive director, California Association of Public Cemeteries  
 Arnie Brinton, Public Cemetery Alliance  
 Peter Brundage, California Association of Local Agency Formation Commissions  
 Royce Ann Ruhkala Burks, California Monument Association  
 Tom Cordy, California Funeral Directors Association  
 John Coupal, Howard Jarvis Taxpayers Association  
 Ralph A. Heim, California Special Districts Association  
 John Llewellyn, Interment Association of California  
 Larry A. McCarthy, California Taxpayers Association  
 Hon. Judy Mikels, California State Association of Counties  
 Jack Stewart, League of California Cities

Besides these 21 members of the formal Working Group, several other knowledgeable people served as advisors, contributing research, drafting, commentary, and evaluation to the project:

Robert J. Achermann, California Funeral Directors Association  
 Paul Antilla, Legislative Counsel Bureau  
 G.V. Ayers, Cemetery and Funeral Bureau, Department of Consumer Affairs  
 Chuck Center, California State Council of Laborers  
 Frances Chacon, Assembly Local Government Committee  
 Charles Davis, Sons of Union Veterans for the Civil War  
 Larry C. Davis, Mountain Valley Memorial Park & Mortuary

Peter Detwiler, Senate Local Government Committee  
 Renee Brooks, Governor's Office of Planning and Research  
 Jed Hendrickson, Santa Barbara Monumental Company  
 Leslie Hobson, Placer County Executive's Office  
 Robert Hunt, Hunt Law Offices  
 Gus A. Kanelos  
 Sid Knable, California Monument Association  
 Dr. Bob LaPerriere, Sacramento County Cemetery Advisory Commission  
 Susie Lorden, Cemetery and Funeral Bureau, Department of Consumer Affairs  
 Emil Marzullo, San Bernardino County's Special District Department  
 James D. Neff, Interment Association of California  
 Marianne O'Malley, Legislative Analyst's Office  
 Sam K. Ong, Veterans Affiliated Council of Sacramento and Vicinity  
 Matt Paulin, Department of Finance  
 Mike Pettengill, Senate Republic Policy Caucus  
 Georges R. Robin, Disabled American Veterans, American River Chapter 65  
 Sue Silver, El Dorado County Pioneer Cemeteries Commission  
 David Simich, California Monument Association  
 Catherine Smith, California Special Districts Association  
 Jennifer Swenson, Senate Local Government Committee  
 William Weber, Assembly Republican Caucus

### **A Brief History of Cemetery Districts**

Over 90 years ago, the Legislature adopted the first public cemetery district law by passing Senate Bill 524 (Roseberry, 1909). The bill's author was Senator Louis H. Roseberry (R-Santa Barbara). Roseberry was a Stanford educated attorney and reformer who supported the Republican Party's Progressive wing. In 1912, after completing his Senate term, he moved his law practice from Santa Barbara to Los Angeles.

Exactly why Senator Roseberry authored the original statute is unknown, but communities in Santa Barbara County formed some of the earliest cemetery districts, including Lompoc (1909) and Goleta (1910). On May 18, 1909, just months after Governor James N. Gillett signed Roseberry's bill, the Santa Barbara County Board of Supervisors appointed James Sloan, H. Poland, and J.C. Lind to be the first trustees of the Lompoc Cemetery District. The new public agency took over the ownership and operation of the Evergreen Cemetery which the Lompoc Valley Land Company originally founded in 1875.

The Legislature revised the original Public Cemetery District Law in 1921 by enacting Senate Bill 155 authored by Senator Claude F. Purkitt (D-Willows). SB 155 spelled out the public cemetery districts' powers in just 12 sections. After leaving the State Senate, Purkitt (1875-1930) was a Glenn County judge (1921-28) while he also chaired the State Democratic Party (1922-28).

The Public Cemetery District Law became part of the newly-enacted Health & Safety Code in 1939. Senate Bill 657 by Senators Mixter and Foley created the Health & Safety Code for the first time. Senator Frank W. Mixter represented Tulare County and Senator John D. Foley was from Santa Clara County. Starting at Health & Safety Code §8890, the Public Cemetery District Law was just one piece of the new comprehensive code.

Table 1 on page 114 lists the bills that have amended the Public Cemetery District Law over the last 95 years. In addition to these legislative changes, the statutory record includes several formal opinions by the California Attorney General and the Legislative Counsel, as reported in Table 2 on page 116.

### **The Revision Project**

The Working Group met three times in Sacramento during 2002. The Working Group's members and advisors volunteered their time and paid their own travel expenses. On October 15 and 25, the Working Group reviewed the 1939 law and recommended revisions. The Working Group came back to the Capitol on December 13 to review the first draft of the replacement statute. Table 3 on page 117 reports the Working Group members' attendance at these meetings.

October 15. The Working Group's initial meeting on October 15 convened in the State Capitol. Fourteen of the Working Group's 21 members attended. The staff of the Senate Local Government Committee had prepared a copy of the 1939 law, presenting each section on a separate page with a description and commentary of every section. Covering 136 pages, this "Text & Commentary" was the basis for the Working Group's review of the 1939 law. The Committee's staff also gave the Working Group a "Disposition Table" that listed each section of the law, its topic, and a place to indicate what the Working Group wanted.

The meeting began at 9:30 a.m. and lasted over six hours, including a working lunch. On behalf of Senator Torlakson, Peter Detwiler welcomed the Working Group and described Torlakson's charge: to be inclusive and draw-in all interested parties, to listen carefully and learn from others' experiences, and to work for "near consensus" in developing a bill that the Committee could author. Following self-introductions, Detwiler described the process that the Working Group would follow to recommend changes. He also explained that the Working Group would focus just on cemetery districts and not review the state laws affecting county, city, or privately-owned cemeteries. There would be no changes to the current statutory limits that prohibit cemetery districts from building mausoleums or selling markers. The revision efforts would concentrate on the cemetery districts' organization, structure, powers, and finances.

To structure the discussion of each of the 135 sections in the 1939 law, the Working Group relied on a rating sheet that offered four choices:

A = *This section is fine, just the way it reads.*

B = *This section is in pretty good shape but it needs this minor change: \_\_\_\_\_.*

C = *This topic should be retained but the contents need an overhaul. It should include: \_\_\_\_\_.*

D = *This section is obsolete. Repeal it.*

The Working Group members and advisors reviewed about a third of the 1939 statute --- Health & Safety Code §8890 through §8961 --- before the day's discussions ended.

October 25. When the Working Group returned to the State Capitol 10 days later on October 25, 17 members were present. The Committee's staff distributed a statutory history of the public cemetery district law, along with excerpts from other districts' principal acts relating to their governing boards' roles. The Working Group members and advisors discussed all of the remaining code sections, completing their review of the 1939 statute.

Draft #1. On December 4, the Committee's staff mailed out the text of Draft #1 of a proposed new Public Cemetery District Law. The 87-page document reflected the staff's understanding of the Working Group's requests, along with notes covering each section's "Topic, Derivation, and Comments." The Committee's staff placed similar statutory topics into eight thematic articles:

General Provisions	Interments
Formation	Finances
Board of Trustees	Alternative Revenues
Powers and Duties	Zones

The staff relied on the Fire Protection District Law, the Recreation and Park District Law, and the Mosquito Abatement and Vector Control District Law as models for this drafting exercise. The December 4 mailing also included a Source Table that identified the statutory origins of each section in Draft #1 and a Disposition Table showing where each section of the 1939 law had gone. The Committee's staff invited the Working Group members and advisors to ask four questions about each draft section:

- *Does the proposed language do what the Working Group wanted?*
- *Is the proposed language clear and unambiguous?*
- *What's missing from the proposed language?*
- *What specific improvements are needed? Please suggest specific wording.*

December 13. The Working Group's third meeting in Sacramento attracted 17 members for a session dedicated to reviewing Draft #1. Starting at 9:30 a.m., the members and advisors received written comments from:

- Dewey Ausmus, California Association of Public Cemeteries.
- Sue Silver, El Dorado County Pioneer Cemeteries Commission.
- John Llewellyn, Interment Association of California.
- Dan Schwarz, Napa County LAFCO.
- Arnie Brinton, Public Cemetery District Alliance.
- Anna M. Herrera, Clovis Cemetery District.

Starting with §9000, the Working Group looked and commented on each section of Draft #1. Many of the discussions on specific sections went quickly, reflecting the Working Group's agreement that the draft language reflected their requests. Conversations on other sections were more detailed as members and advisors debated the specific words. The Committee's staff took the Working Group's requests and from them prepared Draft #2.

Draft #2. Reflecting the revisions requested by the Working Group, on December 19 the Committee's staff mailed out Draft #2. Besides correcting typographical and grammatical errors, the 89-page Draft #2 differed from Draft #1 on several significant points:

- Edited the legislative intent language in §9001.
- Added the definition of “nonresident” in §9002.
- Omitted language on trustees’ substantive qualifications in §9022.
- Restored language allowing trustees to serve until successors qualify in §9024.
- Allowed county supervisors to override protests to changing a district’s governance if needed to protect the public health, safety, or welfare in §9026.
- Allowed trustees to pick their officers annually in §9028.
- Added “interment services” to the list of district powers in §9040.
- Added the duty to maintain district-owned cemeteries in §9040.
- Deleted the requirement to sell or lease property to the highest bidder in §9041.
- Deleted the districts’ ability to donate property to nonprofit groups in §9041.
- Deleted competitive bidding requirements in §9041 and the Public Contract Code.
- Added language allowing districts to train trustees in governance skills in §9041.
- Added language allowing districts to appoint advisory committees in §9041.
- Recognized private mausoleums built before 2003 in §9051.
- Required districts to charge when selling cemeteries in §9055.
- Expanded the purposes for which districts can grant easements in §9056.
- Clarified the criteria for interring nonresidents in §9061.
- Deleted language limiting endowment care charges in §9065.
- Allowed districts to charge endowment care fees, deliberately superceding a 1989 Legislative Counsel’s opinion in §9065.
- Deleted language limiting the use of endowment care funds to interments, thereby allowing districts to use the funds to generally take care of their cemeteries in §9065.
- Added language allowing districts to invest the endowment income funds as §9067.
- Clarified the procedures for abandoning interment sites in §9069.
- Added language listing the types of reserve funds in §9070.
- Added language exempting certain districts from the Gann Limit in §9072.
- Deleted language allowing districts to use general obligation bonds to raise capital for endowment care funds in §9082.
- Repealed the 1939 law.

When the Committee’s staff circulated Draft #2, they asked the Working Group members and advisors to comment by January 10, 2003. Several Working Group members and advisors asked for additional changes:

- Add language that gives districts exclusive control over the maintenance and management of the cemeteries it owns in §9040.
- Restore the districts’ ability to donate property to nonprofit groups in §9041.
- Include a cross-reference to the existing law governing special districts’ records in §9043.
- Clarify that a district cannot sell monuments or markers in §9053.
- Delete the authority to inter residents’ domestic partners in §9060.
- Rewrite the language on nonresidents’ fees in §9068.

- Add language limiting districts' bonded debt to 2% of assessed value in §9082.
- Delete districts' authority to levy benefit assessments in §9083.
- Delete references to property-related fees in §9084.

The Committee's staff made these changes to Draft #2 and asked the Legislative Counsel to draft a formal bill for the Committee to introduce.

### **The Legislative History of SB 341**

On February 12, 2003, Senator Torlakson wrote to this colleagues on the Senate Local Government Committee, inviting them to join him in authoring the bill to revise the public cemetery districts' statutes. When all of the Committee members agreed to the project, they introduced SB 341 on February 19.

Copies of the text of each version of SB 341, copies of the analyses prepared on the bill, and records of the Legislature's votes on the measure are available from the website maintained by the Legislative Counsel: [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

March 24 version. To prepare for its April 2 hearing on SB 341, the Committee amended its bill on March 24. Other than typographical and spelling corrections, the only significant amendment was to amend Health & Safety Code §8136 to insert a correct cross-reference to the proposed new Public Cemetery District Law.

Remaining controversy. Prompted by Sue Silver of California Saving Graves, more than 80 people wrote to the Committee to oppose §9055. That section allowed cemetery districts to sell public cemeteries under certain conditions. As a matter of principle, Ms. Silver and others believe that a cemetery in public ownership should never become a private cemetery. Publicly owned cemeteries are held in trust, they argue, for past generations and their descendents. During its discussions, the Working Group decided that state law should continue to a cemetery district's ability to sell a district cemetery but recommended reforms to the statutory process. In SB 341, that language appeared as §9055 which Ms. Silver and others wanted the Committee to delete. Responding to notices posted on websites, many individuals wrote letters and sent email messages to the Committee, asking for the deletion of §9055. The Committee's staff shared this controversy with the Working Group and its advisors in a March 24 memo that described current law, recounted the only known use of the statute, reviewed the Working Group's discussion, described §9055, and offered possible responses. Several of the Working Group members responded with their advice.

April 2 hearing. The Senate Local Government Committee set SB 341 for hearing on April 2. Preparing for that hearing, the Committee's staff released a five-page bill analysis that described how the measure affected the cemetery districts' policies, powers, procedures, and oversight mechanisms, as well as how SB 341 amended related statutes. The analysis also described the remaining controversy over the ability of cemetery districts to sell district cemeteries. Those representing pioneer and historic cemeteries opposed §9055, the bill's provision that allows districts to sell public cemeteries. The Committee's bill analysis observed that legislators had at

least three choices: (a) delete §9055, (b) retain §9055, or (c) amend §9055 to add more procedural safeguards.

At the April 2 hearing, Senator Torlakson presented SB 341 and recommended that the Committee amend SB 341 to impose additional procedural safeguards on the districts' sale of public cemeteries. The Committee accepted these amendments. Dewey Ausmus, representing the California Association of Public Cemeteries, spoke in support of the bill. Sue Silver, representing a group called California Saving Graves, opposed SB 341, as did Dr. Bob LaPerriere who spoke as an individual. After hearing these comments, Senator Ackerman moved the amended bill which then passed the Committee on a 7 to 0 roll call vote.

April 8 amendments. The April 8 version of SB 341 reflects the changes adopted by the Committee on April 2 when it passed the bill. The amendments to §9055 require a cemetery district to disclose more information about the public cemetery that it proposes to sell. The amendments expand the public notice that a county board of supervisors must give before its public hearing on the district's request to sell the cemetery. The amendments require the district to retain the right of entry and repair even after the cemetery is sold.

Senate approval. To prepare for the Senate's action on SB 341, the Office of Senate Floor Analyses released an eight-page analysis that generally followed the one prepared by the Senate Local Government Committee's staff. On April 10, Senator Torlakson presented SB 341 on the Senate Floor. The Senator's statement notes that the Working Group and its advisory had reached a "near consensus" in rewriting the state laws that govern California's 253 public cemetery districts. His statement explained that the Committee had amended its bill in response to objections to the provisions allowing a district to sell a cemetery, declaring the amended procedure to be a "major improvement over current law." On a roll call vote, the Senate passed SB 341 by the vote of 40 to 0.

A late request. On May 27, Sidney Knable, executive director of the California Monument Association, wrote to the Committee's staff to ask for an additional amendment to §9055. Acknowledging that "the suggested amendment comes late in the day," Mr. Knable asked for "a very slight amendment" to allow a cemetery district to lease a public cemetery. This amendment would overturn a recent appellate court decision affecting the City of Colton's cemetery. The Committee's staff responded with a May 29 letter that declined the Association's request for three reasons: statutory interpretation, public policy consequences, and the avoidance of political problems with SB 341.

June 18 hearing. The Assembly Local Government Committee's five-page bill analysis prepared for its June 18 hearing did not raise any policy questions about SB 341. Absent formal opposition, the Committee placed the measure on its Consent Calendar. Accordingly, Senator Torlakson did not appear at the hearing and the Committee heard no testimony. The Committee moved its Consent Calendar, including SB 341, by a vote of 9 to 0, sending the bill to the Assembly Floor.

Assembly approval. On June 27, by the vote of 76 to 0, the Assembly passed its Consent Calendar, including SB 341. Following its custom and practice, the Assembly did not debate any of the bills on its Consent Calendar.

Governor's signature. Following the Legislature's standard practice, SB 341 went through the formal enrollment procedures, reaching Governor Gray Davis on July 1. On June 30, writing on behalf of the members of the Senate Local Government Committee, Senator Torlakson asked the Governor to sign the Committee's bill. Senator Torlakson's letter described the "months of careful effort" that preceded SB 341, and how "the Working Group and its advisors carefully examined each section of the current law, discarding obsolete sections, revising outdated provisions, and retaining the most useful language." His letter acknowledged that, "While interment customs and practices have changed since the creation of public cemetery districts, communities continue to need the means to own, improve, expand, and operate public cemeteries."

On July 14, Governor Davis signed SB 341 into law as Chapter 57 of the Statutes of 2003. The newly enacted Public Cemetery District Law became effective on January 1, 2004.



**Text and Commentary**

**CALIFORNIA HEALTH & SAFETY CODE**

**Division 8. Cemeteries.**

**Part 4. Public Cemetery Districts.**

**Chapter 1. General Provisions.**

9000. This part shall be known and may be cited as the Public Cemetery District Law.

Topic, Derivation, and Comments: Name. New section.

This section gives the statute a formal name which the 1939 Law lacked.

9001. (a) The Legislature finds and declares all of the following:

(1) There is a continuing need to provide for the respectful and cost-effective interment of human remains to meet the cultural, economic, religious, and social needs of California's diverse communities.

(2) The Legislature authorized the creation of public cemetery districts in 1909 to assume responsibility for the ownership, improvement, expansion, and operation of cemeteries and the provision of interment services from fraternal, pioneer, religious, social, and other organizations that were unable to provide for those cemeteries.

(3) For nearly a century, public cemetery districts have provided communities with the means to publicly finance the ownership, improvement, expansion, and operation of public cemeteries and the provision of interment services, particularly in rural and formerly rural communities.

(4) Interment customs and practices have changed since the creation of the public cemetery districts but communities continue to need the means to own, improve, expand, and operate public cemeteries that provide respectful and cost-effective interments.

(b) In enacting this part, it is the intent of the Legislature to create and continue a broad statutory authority for a class of special districts that can own, improve, expand, and operate public cemeteries that provide respectful and cost-effective interments.

(c) It is also the intent of the Legislature that local officials adapt the powers and procedures provided by this part to meet the diversity of local conditions and circumstances.

Topic, Derivation, and Comments: Legislative Findings and Intent. New.

Subdivision (a) formally recites the problems that the Legislature wants to solve in enacting the new Law.

Subdivision (b) declares the Legislature's intent and maintains the statutory continuity from the 1939 Law to the new Public Cemetery District Law.

Subdivision (c) declares the Legislature's intent to adopt a statute that's flexible enough to accommodate local variations.

9002. The definitions in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 apply to this part. Further, as used in this part, the following terms have the following meanings:

(a) “Active militia” means the active militia as defined by Section 120 of the Military and Veterans Code.

(b) “Armed services” means the armed services as defined by Section 18540 of the Government Code.

(c) “Board of trustees” means the legislative body of a district.

(d) “District” means a public cemetery district created pursuant to this part or any of its statutory predecessors.

(e) “Family member” means any spouse, by marriage or otherwise, child or stepchild, by natural birth or adoption, parent, brother, sister, half-brother, half-sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or any person denoted by the prefix “grand” or “great,” or the spouse of any of these persons.

(f) “Firefighter” means a firefighter as defined by Section 1797.182.

(g) “Nonresident” means a person who does not reside within a district and does not pay property taxes on property located in a district.

(h) “Peace officer” means a peace officer as defined by Section 830 of the Penal Code.

(i) “Principal county” means the county having all or the greater portion of the entire assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within a district.

(j) “Voter” means a voter as defined by Section 359 of the Elections Code.

Topic, Derivation, and Comments: Definitions. These definitions apply throughout the entire Part 4. The statutory definitions in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 apply to all of Division 7, including this Part.

Subdivision (a) is based on §8961.5 (b)(2).

Subdivision (b) is based on §8961.5 (b)(1).

Subdivision (c) is based on §8892.

Subdivision (d) is based on §8891.

[THE COMMENTARY CONTINUES ON THE NEXT PAGE]

Subdivision (e) is new and derived from Health & Safety Code §1569.145, the definition of “family member” used in the state law that requires licenses for residential care facilities for the elderly.

Subdivision (f) is based on §8961.5 (b)(4).

Subdivision (g) is based on §8893.

Subdivision (h) is based on §8961.5 (b)(3).

Subdivision (i) is new and derived from Government Code §56066, the definition in the Cortese-Knox-Hertzberg Act. It replaces a concept in the 1939 Law which assigned various powers to the county government of the county that contained the majority of a district’s acreage; see, for example, former §8900.

Subdivision (j) is new and derived from Health & Safety Code §2002 (l) and Public Resources Code §5780.1 (i). It replaces the term “elector” from the 1939 Law.

9003. (a) This part provides the authority for the organization and powers of public cemetery districts. This part succeeds the former Part 4 (commencing with Section 8890), as added by Chapter 60 of the Statutes of 1939, as subsequently amended, and any of its statutory predecessors.

(b) Any public cemetery district formed pursuant to the former Part 4 or any of its statutory predecessors which was in existence on January 1, 2004, shall remain in existence as if it has been organized pursuant to this part.

(c) Any indebtedness, special tax, benefit assessment, fee, election, ordinance, resolution, regulation, rule, or any other action of a district taken pursuant to the former Part 4 or of any of its statutory predecessors which was taken before January 1, 2004, shall not be voided solely because of any error, omission, informality, misnomer, or failure to comply strictly with this part.

Topic, Derivation, and Comments: Succession. Based on §9100 and derived from Health & Safety Code §2003 and Public Resources Code §5780.3.

Subdivision (a) makes it clear that the new law is the successor to the 1939 Law.

Subdivision (b) makes it clear that district formed under the 1939 Law or the earlier statutes continue to exist under the new law.

Subdivision (c) makes it clear that the districts' actions taken under the 1939 Law or the earlier statutes continue to exist under the new law.

9004. This part is necessary to protect the public health, safety, and welfare, and shall be liberally construed to effectuate its purposes.

Topic, Derivation, and Comments: Constitutional Basis and Liberal Construction. New and derived from Health & Safety Code §2004 and Public Resources Code §5780.5.

If someone sues a district for stretching its constitutional authority, this language will be useful in defending the district's actions. This approach is consistent with the Legislature's intent to set up districts with enough power to serve local communities and adapt to local circumstances; see §9000.

9005. If any provision of this part or the application of any provision of this part in any circumstance or to any person, city, county, special district, school district, the state, or any agency or subdivision of the state is held invalid, that invalidity shall not affect other provisions or applications of this part which can be given effect without the invalid provision or application of the invalid provision, and to this end the provisions of this part are severable.

Topic, Derivation, and Comments: Severability. New and derived from Health & Safety Code §2005 and Public Resources Code §5780.7.

If a court finds that some piece of the new law is invalid, the rest of the law remains on the books.

9006. (a) Any action brought to determine the validity of the organization or of any action of a district shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(b) Any judicial review of an action taken pursuant to this part shall be conducted pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure.

Topic, Derivation, and Comments: Legal Challenges. New and derived from Health & Safety Code §2006 and Public Resources Code §5780.9.

Subdivision (a) relies on the commonly used validation procedure which sets a 60-day statute of limitations. The 1939 Law lacked a section that instructs challengers about the process or the deadline for filing challenges.

Subdivision (b) directs the courts to the judicial standards of review that the Legislature wants them to apply to challenges. The 1939 Law did not provide any standards of review. The usual standard of review for legislative actions is CCP §1084; for administrative actions the usual standard is CCP §1094.5. Rather than listing separate standards of review for separate types of decisions, this language provides a general reference to the chapter in the Code of Civil Procedure that contains both standards. In other words, both CCP §1084 and CCP §1094.5 are located in Chapter 2 and so both are covered by this language.



9007. (a) Except as provided in this section, territory, whether incorporated or unincorporated, whether contiguous or noncontiguous, may be included in a district. Territory that is already within a public cemetery district or another type of special district that provides cemetery facilities and services shall not be included within a public cemetery district.

(b) Except as provided in this part, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code, shall govern any change of organization or reorganization of a district. In the case of any conflict between that division and this part, the provisions of this part shall prevail.

(c) A district shall be deemed an “independent special district,” as defined by Section 56044 of the Government Code, except when a county board of supervisors has appointed itself as the board of trustees.

Topic, Derivation, and Comments: Area and Boundaries.

Subdivision (a) is based on §8890 and §9025, and derived from Health & Safety Code §2007 (a). This language clearly identifies which territory can be included in a district.

Subdivision (b) is new. The Cortese-Knox-Hertzberg Act already governs the districts’ boundary changes but the 1939 Law did not provide an overt cross-reference to the LAFCO law. This language makes obsolete most of Chapters 2, 3, 4, and 5 of the 1939 Law which set out the procedures for forming new districts. This new subdivision clearly links the procedures for forming a new district (see Chapter 2 which begins at §9010) with the LAFCO law.

Subdivision (c) is new. Representatives of independent special districts can be members of the local agency formation commission (LAFCO) (Government Code §56332). Independent special districts share the cost of LAFCO’s budget when special district representatives sit on LAFCO (Government Code §56381 [b]). The Cortese-Knox-Hertzberg Act defines “independent special district” to include special districts with legislative bodies composed of either directly elected members or members who have been appointed to fixed terms. Public cemetery districts fit the latter requirement, except when the county supervisors have appointed themselves to govern a district *ex officio*. Because most independent special districts have directly elected governing boards, some observers forget that districts with boards appointed to fixed terms are also independent special districts. This language is a statutory reminder of that qualification.

**Chapter 2. Formation.**

9010. A new district may be formed pursuant to this chapter.

Topic, Derivation, and Comments: Formation Authority. Based on §8890 and derived from Health & Safety Code §2010 and Public Resources Code §5782.

This language formally signals the start of the chapter that lays out the statutory procedures to form a new district.

9011. (a) A proposal to form a new district may be made by petition. The petition shall do all of the things required by Section 56700 of the Government Code. In addition, the petition shall:

(1) Set forth the methods by which the district will be financed, including but not limited to special taxes, special benefit assessments, and fees.

(2) Propose a name for the district.

(3) Specify the size of the initial board of trustees and the method of their appointment.

(b) The petitions, the proponents, and the procedures for certifying the sufficiency of the petitions shall comply with Chapter 2 (commencing with Section 56700) of Part 3 of Division 3 of Title 5 of the Government Code. In the case of any conflict between that chapter and this chapter, the provisions of this chapter shall prevail.

(c) The petition shall be signed by not less than 25 percent of the registered voters residing in the area to be included in the district, as determined by the local agency formation commission.

Topic, Derivation, and Comments: Petition Signatures. Based on §8900 and §8901, and derived from Health & Safety Code §2011.

Subdivision (a) directs proponents to the Cortese-Knox-Hertzberg Act's procedures for forming new districts and this language incorporates those provisions by reference. This approach makes obsolete most of Chapters 2, 3, 4, and 5 of the 1939 Law which set out the procedures for forming new districts. The new requirement to explain where the new district will get its revenues should help to weed out fiscally impractical proposals.

Subdivision (b) tells the petitioners that they must comply with the petition requirements of the Cortese-Knox-Hertzberg Act.

Subdivision (c) changes the petition's threshold in two ways. First, it raises the number of signatures from an absolute number (50 signatures, no matter how big the proposed district) to a relative amount (signatures from 25% of the proposed district's voters). Second, it changes the petitioners' qualifications from landowning citizens to registered voters. This language follows the precedent for mosquito abatement districts (Health & Safety Code §2100), recreation and park districts (Public Resources Code §5782.1), and fire protection districts (Health & Safety Code §13818). It's also similar to the percentage and base for city incorporation petitions.

9012. (a) Before circulating any petition, the proponents shall publish a notice of intention which shall include a written statement not to exceed 500 words in length, setting forth the reasons for forming the district and the methods by which the district will be financed. The notice shall be published pursuant to Section 6061 of the Government Code in one or more newspapers of general circulation within the territory proposed to be included in the district. If the territory proposed to be included in the district is located in more than one county, publication of the notice shall be made in at least one newspaper of general circulation in each of the counties.

(b) The following shall be signed by a representative of the proponent, and shall be in substantially the following form:

“Notice of Intent to Circulate Petition

“Notice is hereby given of the intention to circulate a petition proposing to form the \_\_\_\_\_ [name of the district]. The reasons for forming the proposed district are: \_\_\_\_\_ . The method(s) by which the proposed district will be financed are: \_\_\_\_\_ .”

(c) Within five days after the date of publication, the proponents shall file with the executive officer of the local agency formation commission of the principal county a copy of the notice together with an affidavit made by a representative of the newspaper in which the notice was published certifying to the fact of the publication.

(d) After the filing required pursuant to subdivision (c), the petition may be circulated for signatures.

Topic, Derivation, and Comments: Notice of Intention. New and derived from Health & Safety Code §2012 and Public Resources Code §5782.3.

Before the proponents can circulate the formation petition, they must publicly state their intentions and file a statement with LAFCO. Note that the requirements in this language are more detailed than a similar requirement in the Cortese-Knox-Hertzberg Act (Government Code §56700.4); this language prevails.

9013. (a) A proposal to form a new district may also be made by the adoption of a resolution of application by the legislative body of any county or city which contains the territory proposed to be included in the district. Except for the provisions regarding the signers, signatures, and the proponents, a resolution of application shall contain all of the matters specified for a petition in Section 9011.

(b) Before adopting a resolution of application, the legislative body shall hold a public hearing on the resolution. Notice of the hearing shall be published pursuant to Section 6061 of the Government Code in one or more newspapers of general circulation within the county or city. At least 20 days before the hearing, the legislative body shall give mailed notice of its hearing to the executive officer of the local agency formation commission of the principal county. The notice shall generally describe the proposed formation of the district and the territory proposed to be included in the district.

(c) At the hearing, the legislative body shall give any person an opportunity to present his or her views on the resolution.

(d) The clerk of the legislative body shall file a certified copy of the resolution of application with the executive officer of the local agency formation commission of the principal county.

Topic, Derivation, and Comments: Application by Resolution. New. Derived from Health & Safety Code §2013 and Public Resources Code §5782.5.

Any city or county that contains territory in the proposed new district can initiate the formation procedures by adopting a resolution after a noticed public hearing.

9014. (a) Once the proponents have filed a sufficient petition or a legislative body has filed a resolution of application, the local agency formation commission shall proceed pursuant to Part 3 (commencing with Section 56650) of Division 3 of Title 5 of the Government Code.

(b) Notwithstanding any other provision of law, a local agency formation commission shall not approve a proposal that includes the formation of a district unless the commission determines both of the following:

- (1) That the public interest requires the formation of the proposed district.
- (2) That the proposed district will have sufficient revenues to carry out its purposes.

(c) Notwithstanding paragraph (2) of subdivision (b), a local agency formation commission may approve a proposal that includes the formation of a district where the commission has determined that the proposed district will not have sufficient revenue provided that the commission conditions the approval on the approval by the voters of special taxes or approval by the property owners of special benefit assessments that will generate those sufficient revenues. The commission shall provide that if the voters do not approve the special taxes or if the property owners do not approve the special benefit assessments, the proposed district shall not be formed.

(d) If the local agency formation commission approves the proposal for the formation of a district, then, notwithstanding Section 57007 of the Government Code, the commission shall proceed pursuant to Part 4 (commencing with Section 57000) of Division 3 of Title 5 of the Government Code.

(e) Notwithstanding Section 57075 of the Government Code, the local agency formation commission shall take one of the following actions:

- (1) If a majority protest exists in accordance with Section 57078 of the Government Code, the commission shall terminate proceedings.
- (2) If no majority protest exists, the commission shall either:
  - (A) Order the formation subject to the approval by the voters.
  - (B) Order the formation subject to the approval by the voters of a special tax or the approval by the property owners of a special benefit assessment, pursuant to subdivision (c).

(f) If the local agency formation commission orders the formation of a district pursuant to paragraph (2) of subdivision (e), the commission shall direct the board of supervisors to direct county officials to conduct the necessary elections on behalf of the proposed district.

Topic, Derivation, and Comments: LAFCO Proceedings. New and derived from Health & Safety Code §2014 and Public Resources Code §5782.7.

[THE COMMENTARY CONTINUES ON THE NEXT PAGE]

The 1939 Law directed the county board of supervisors to conduct the formation proceedings without reference to the Cortese-Knox-Hertzberg Act which clearly gives LAFCO the power to approve or disapprove the formation of all new special districts (Government Code §56375 [a]). This language meshes the two statutes.

Subdivision (a) directs LAFCO to proceed with the formation proposal once there is a valid petition or a valid resolution of application.

Subdivision (b) prohibits LAFCO from approving a proposed district unless LAFCO makes two determinations. Note that the language says “determinations” not “findings.” LAFCO is a quasi-legislative body, not an administrative body. Unlike an administrative body, LAFCO does not need to make findings that are based on substantial evidence in the record. These are legislative determinations, not administrative findings.

(1) The first determination is a straightforward requirement that the formation of a new district must be in the public interest, as LAFCO understands local conditions and circumstances.

(2) The second determination prohibits LAFCO from approving a proposed district if it lacks sufficient revenue. The Working Group did not want LAFCO to approve a new district but then have the voters turn down the taxes or assessments needed to pay for the new district. This determination avoids setting up “hollow shells.”

Subdivision (c) requires LAFCO to link the formation to the funding. It’s consistent with LAFCO’s existing powers (Government Code §56886 [s]). If the voters or the property owners reject the proposed funding methods, the proposed district formation also fails. In other words, “no dollars, no district!”

Note that subdivision (d) effectively supercedes the 1946 Attorney General’s opinion that said that a cemetery district doesn’t have to reimburse the county for its formation costs (7 Ops.Cal. Atty.Gen. 398). Under these provisions of the Cortese-Knox-Hertzberg Act, a newly-formed district must reimburse the county’s costs; if the election fails, the county must absorb the costs (Government Code §57150 [b]).

Subdivision (e) explains when an election is required to form a proposed district. If there is a majority voter protest, then the formation proposal stops and never gets to the ballot.

Subdivision (f) tells county officials to conduct formation election. Note that the Cortese-Knox-Hertzberg Act requires majority-voter approval to form a new special district. The 1939 Law required 2/3-voter approval to form a new cemetery district; see the former §8938 and §8939. This language also directs the county to run the tax election or the assessment proceedings because the district has yet to be formed. This language is based on Government Code §50077 (c). If the formation succeeds, then the new district pays the county’s costs; if it fails, the county must absorb the costs (Government Code §57150 [b]).

### **Chapter 3. Board of Trustees**

9020. A legislative body of at least three members known as the board of trustees shall govern every district. The board of trustees shall establish policies for the operation of the district. The board of trustees shall provide for the faithful implementation of those policies which is the responsibility of the employees of the district.

Topic, Derivation, and Comments: Board of Trustees. Based on §8950 and derived from Health & Safety Code §2020 and Public Resources Code §5784.

Not only does this language clearly assign governance to the board of trustees, it also distinguishes the board's role in making policy from the staff's role in implementing the board's policies. This statutory distinction is important to avoid situations where a board might micro-manage district business and to avoid situations where the staff might usurp the board's policy-making role. This section must be read in conjunction with §9041 (e), regarding the duties of a district's employees.



9021. Within 30 days after the effective date of the formation of a district, a board of trustees shall be appointed as follows:

(a) In the case of a district that contains territory in a single county, the board of supervisors shall appoint three or five persons to the board of trustees.

(b) In the case of a district that contains territory in more than one county, the board of supervisors of the principal county shall appoint three or five persons from any county in which the district is located to the board of trustees.

Topic, Derivation, and Comments: Initial Board of Trustees. Based on §8950 and derived from Health & Safety Code §2021.

Subdivision (a) allows for an initial board of trustees of either three or five members. When the LAFCO approves the proposal to form a new district, it can impose “terms and conditions” to determine whether the new district’s initial board of trustees should have three or five members. See Government Code §56886 (n) and (q).

Subdivision (b) deviates slightly from the 1939 Law which gave all of the trustee appointments in a multi-county district to the county supervisors of the county that contains the largest part of the district’s territory. The proposed language assigns the appointments to the county supervisors in the “principal county,” the one that contains the majority of the district’s assessed value not the majority of its land area. A survey of the 12 existing multi-county districts by the California Association of Public Cemeteries showed a wide variety of appointment practices. Of the eight districts responding, four have three-member boards and four have five-member boards. In seven of the multi-county districts, the appointments come from the county supervisors of the predominant county; in the other district, the counties share trustee appointments.

9022. (a) Each person appointed by a board of supervisors to be a member of a board of trustees shall be a voter in the district.

(b) All trustees shall exercise their independent judgment on behalf of the interests of the residents, property owners, and the public as a whole in furthering the purposes and intent of this part. The trustees shall represent the interests of the public as a whole and not solely the interests of the board of supervisors that appointed them.

Topic, Derivation, and Comments: Trustees' Qualifications.

Subdivision (a) is based on §8951 and derived from Health & Safety Code §2022 (a).

Subdivision (b) is new and derived from Health & Safety Code §2022 (e) and Government Code §56321.1, the statutory admonitions to mosquito abatement districts' trustees and LAFCO commissioners to act in the public interest, and not solely in the interest of their appointing authorities.

9023. (a) The initial board of trustees of a district formed on or after January 1, 2004, shall be determined pursuant to this section.

(b) The persons appointed to the initial board of trustees shall meet on the first Monday after 45 days after the effective date of the formation of the district.

(c) At the first meeting of the initial board of trustees, the trustees shall classify themselves by lot into two classes, as nearly equal as possible. The term of office of the class having the greater number shall expire at noon on the first Monday in January that is closest to the fourth year from the appointments made pursuant to Section 9021. The term of office of the class having the lesser number shall expire at noon on the first Monday in January that is closest to the second year from the appointments made pursuant to Section 9021.

Topic, Derivation, and Comments: Initial Board of Trustees.

Subdivision (a) is new and derived from Health & Safety Code §2023 (a) and Public Resources Code §5783.

Subdivision (b) is new and derived from Health & Safety Code §2023 (b). Note that the first meeting is at least 15 days after the 30-day deadline for appointing trustees set by §9021. (That is:  $15 + 30 = 45$  days.)

Subdivision (c) is based on §8952 (b) which allows the county supervisors to stagger the terms of office of the initial board of trustees. This language requires staggered terms, so that the county supervisors must appoint about half of the trustees every two years. One Working Group member called the staggered terms, “continuity with opportunity.”

9024. (a) Except as provided in subdivision (b) of this section, subdivision (c) of Section 9023, and subdivision (d) of Section 9026, the term of office for a member of the board of trustees shall be for a term of four years and until the appointment and qualification of the successor. Terms of office commence at noon on the first Monday in January.

(b) For districts formed before January 1, 2004, where the members of the board of trustees are not serving staggered terms, the board of supervisors shall stagger the terms of the trustees and to accomplish this purpose shall appoint trustees, on or after January 1, 2004, for terms of less than four years. However, a board of supervisors shall not reduce the term of office of a trustee once the trustee has been appointed to that term, whether the appointment was made before, on, or after January 1, 2004.

(c) Any vacancy in the office of a member appointed to a board of trustees shall be filled promptly pursuant to Section 1779 of the Government Code. Any person appointed to fill a vacant office shall fill the balance of the unexpired term.

Topic, Derivation, and Comments: Trustees' Terms of Office.

Subdivision (a) is based on §8952 (a) and derived from Health & Safety Code §2024 (a).

Subdivision (b) is based on §8952 (b), except that this language requires (instead of permits) county supervisors to appoint trustees to staggered four-year terms. With this language, the county supervisors will be appointing about half of the trustees every two years. This approach avoids the possibility of a complete turnover in membership, depriving a board of trustees of continuity. Mandating staggered four-year terms promotes continuity and stability.

Subdivision (c) is new and derived from Health & Safety Code §2024 (b) and Public Resources Code §5784.3 (c). Government Code §1779 is the standard method for filling vacancies on special districts' governing boards that have appointed members. Government Code §1770 explains when an office becomes vacant, covering a dozen contingencies (e.g., death, resignations, convictions). The language that allows the new appointed to "fill the balance of the unexpired term" comes from Government Code §1780 (a). Note that the language directs the county supervisors to appoint replacements "promptly," a word added at the express request of the Working Group. When vacancies occur, this adverb may help district officials get the county supervisors' attention.

9025. (a) A board of trustees may adopt a resolution requesting the board of supervisors of the principal county to increase or decrease the number of members of the board of trustees. The resolution shall specify the number of members for which the board of trustees requests the increase or decrease.

(b) Within 60 days of receiving a resolution adopted pursuant to subdivision (a), the board of supervisors shall consider the resolution at a public hearing. The board of supervisors shall give notice of its hearing by publishing a notice pursuant to Section 6061 of the Government Code in at least one newspaper of general circulation within the jurisdiction of the district at least 10 days before the hearing. In addition, the board of supervisors shall mail the notice at least 10 days before the hearing to the district and any other person who has filed written request for notice with the clerk of the board of supervisors.

(c) At its hearing, the board of supervisors shall receive and consider any written or oral comments regarding the resolution. After receiving and considering those comments, the board of supervisors may adopt a resolution that orders the increase or decrease in the number of members of the board of trustees.

(d) If the board of supervisors adopts a resolution that orders an increase in the number of members of the board of trustees, the board of supervisors shall promptly appoint a person or persons to the board of trustees and specify their term of office, consistent with the requirements of this part. If the board of supervisors adopts a resolution that orders a decrease in the number of members of the board of trustees, the board of supervisors shall designate the trustee or trustees whose office shall be eliminated at the termination of the trustee's current term of office. Any trustee whose office is designated to be eliminated shall continue to serve until his or her term expires.

Topic, Derivation, and Comments: Increase or Decrease Trustees

Subdivision (a) is based on §8950 and derived from Health & Safety Code §2025 (b).

Subdivision (b) is derived from Health & Safety Code §2025 (c). The 1939 Law did not require the county supervisors to give notice of their public meeting.

Subdivision (c) is based on §8950 and derived from Health & Safety Code §2025 (c). However, unlike the Health & Safety Code provision that requires the county supervisors to change the size of the board of trustees if the trustees ask, the language retains the county supervisors' discretion. This language requires the county supervisors to act by resolution, something not found in Health & Safety Code §2025 (c).

Subdivision (d) is derived from Health & Safety Code §2025 (d), providing for an orderly transition in membership.

9026. (a) The board of supervisors of the principal county may appoint itself to be the board of trustees of a district and the board of supervisors may divest itself of that authority, pursuant to this section.

(b) In the case of a district which has a board of trustees appointed by the board of supervisors, the board of supervisors may adopt a resolution declaring its intention to appoint itself to be the board of trustees of the district. In the case of a district where the board of supervisors has appointed itself to be the board of trustees, the board of supervisors may adopt a resolution declaring its intention to divest itself of that authority.

(c) Within 60 days of adopting a resolution adopted pursuant to subdivision (b), the board of supervisors shall hold a public hearing on the question whether the board of supervisors should govern the district. The board of supervisors shall give notice of its hearing by publishing a notice pursuant to Section 6061 of the Government Code in at least one newspaper of general circulation within the jurisdiction of the district at least 10 days before the hearing. In addition, the board of supervisors shall mail the notice at least 10 days before the hearing to the district and any other person who has filed written request for notice with the clerk of the board of supervisors.

(d) At its hearing, the board of supervisors shall receive and consider any written or oral comments regarding a resolution adopted pursuant to subdivision (b). At the conclusion of the hearing, the board of supervisors shall make a finding regarding the value of written protests filed and not withdrawn and take one of the following actions:

(1) In the case of a district that has a board of trustees appointed by the board of supervisors:

(A) If the written protests filed and not withdrawn are less than 10 percent of the registered voters of the district, the board of supervisors may by a majority vote adopt a resolution terminating the appointed board of trustees and appointing itself as the board of trustees of the district. In that case, the terms of any trustees appointed by the board of supervisors shall terminate immediately.

(B) If the written protests filed and not withdrawn are 10 percent or more of the registered voters of the district, the board of supervisors may determine that the proposed change in governance is necessary to protect the public health, safety, and welfare. If the board of supervisors makes that determination, the board of supervisors may override those protests and by a four-fifths vote adopt a resolution terminating the appointed board of trustees and appointing itself as the board of trustees of the district. In that case, the terms of any trustees appointed by the board of supervisors shall terminate immediately.

(C) If the written protests filed and not withdrawn are 10 percent or more of the registered voters of the district and if the board of supervisors does not adopt a resolution pursuant to paragraph (B), the board of supervisors shall adopt a resolution that terminates the proceedings to change the governance of the district.

(2) In the case of a district where the board of supervisors has appointed itself to be the board of trustees:

[THE TEXT AND COMMENTARY CONTINUES ON THE NEXT PAGE]

(A) If the written protests filed and not withdrawn are less than 10 percent of the registered voters of the district, the board of supervisors may by a majority vote adopt a resolution divesting itself of that authority. In that case, the board of supervisors shall promptly appoint persons as members of the board of trustees pursuant to this part.

(B) If the written protests filed and not withdrawn are 10 percent or more of the registered voters of the district, the board of supervisors may determine that the proposed change in governance is necessary to protect the public health, safety, and welfare. If the board of supervisors makes that determination, the board of supervisors may override those protests and by a four-fifths vote adopt a resolution divesting itself of that authority. In that case, the board of supervisors shall promptly appoint persons as members of the board of trustees pursuant to this part.

(C) If the written protests filed and not withdrawn are 10 percent or more of the registered voters of the district and if the board of supervisors does not adopt a resolution pursuant to paragraph (B), the board of supervisors shall adopt a resolution that terminates the proceedings to change the governance of the district.

Topic, Derivation, and Comments: Supervisors As Trustees. Based on §8950.3-§8950.6.

This section allows county supervisors to appoint themselves as a district's board of trustees, and it also allows the county supervisors to divest themselves of a district's governance in favor of appointed trustees.

Subdivision (a) is new. The language announces the topic of the section, something that the Working Group said was missing from §8950.3.

Subdivision (b) is based on §8950.3. Note that the language reduces the vote required by the board of supervisors to adopt its resolution of intention from 4/5-vote to a majority-vote. The language also allows the board of supervisors to start a process to convert a district from dependent to independent status.

Subdivision (c) is based on §8950.4 and §8950.5. Note that the language is similar to the language in the proposed §9025 (b), above.

Subdivision (d) is based on §8950.5 and §8950.6. If the protests are less than 10%, the county supervisors can change a district's governance by a majority-vote of the board of supervisors. If the protests are 10% or more, the county supervisors must either stop the proposed governance change or override the protests on at 4/5-vote, after making determinations. The protest provisions are derived from Government Code §57075 (a), relating to counting protests at a LAFCO's conducting authority hearing.

9027. (a) A local agency formation commission, in approving either a consolidation of districts or the reorganization of two or more districts into a single district, may, pursuant to subdivisions (k) and (n) of Section 56886 of the Government Code, change the number of members on the board of trustees of the consolidated or reorganized district, provided that the resulting number of trustees shall be an odd number but not less than five.

(b) Upon the expiration of the terms of the members of the board of trustees of the consolidated or reorganized district whose terms first expire following the effective date of the consolidation or reorganization, the total number of members on the board of trustees shall be reduced until the number equals the number of members determined by the local agency formation commission.

(c) Notwithstanding subdivision (c) of Section 9024, in the event of a vacancy on the board of trustees of the consolidated or reorganized district at a time when the number of members of the board of trustees is greater than the number determined by the local agency formation commission, the vacancy shall not be filled and the membership of the board of trustees shall be reduced by one member.

Topic, Derivation, and Comments: Expanded Board of Trustees. Based on §8950.01 and derived from Health & Safety Code §2026. The Working Group identified two recent examples of public cemetery districts that consolidated (Banning in 1995; Sutter in 1998) but neither used §8950.01 which the Legislature added in 1996.



9028. (a) At the first meeting of the initial board of trustees of a newly formed district, and in the case of an existing district not later than the first meeting of every calendar year, the board of trustees shall elect its officers.

(b) The officers of a board of trustees are a chairperson, vice-chairperson, and a secretary. The chairperson and vice-chairperson shall be trustees. The secretary may be either a trustee or a district employee. A board of trustees may create additional officers and elect members to those positions. No trustee shall hold more than one office.

(c) Except as provided in Section 9077, the county treasurer of the principal county shall act as the district treasurer. The county treasurer shall receive no compensation for the receipt and disbursement of money of the district.

Topic, Derivation, and Comments: Officers. New and derived from Health & Safety Code §2027 and Public Resources Code §5784.7.

The 1939 Law was silent on these topics. This language makes it clear that the boards of trustees annually pick their own officers.

In subdivision (c), the cross-reference to the §9077 is the language that allows a district to manage its own funds, independently of the county treasurer. Also see §9066 and §9067, regarding the investment of a district's endowment care funds.

9029. A board of trustees shall meet at least once every three months. Meetings of the board of trustees are subject to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code.

Topic, Derivation, and Comments: Meetings. New and derived from Health & Safety Code §2028 and Public Resources Code §5784.11. The 1939 Law was silent on these topics. This language makes it clear that the boards of trustees must hold regular meetings and they must comply with the Brown Act.

9030. (a) A majority of the board of trustees shall constitute a quorum for the transaction of business.

(b) Except as otherwise specifically provided to the contrary in this part, a recorded vote of a majority of the total membership of the board of trustees is required on each action.

(c) The board of trustees shall act only by ordinance, resolution, or motion.

(d) The board of trustees shall keep a record of all of its acts, including financial transactions.

(e) The board of trustees shall adopt rules for its proceedings.

Topic, Derivation, and Comments: Trustee's Decisions. New and derived from Health & Safety Code §2029 and Public Resources Code §5784.13. The 1939 Law was silent on these topics. This language spells out the requirements for making decisions.

9031. (a) The board of trustees may provide, by ordinance or resolution, that each of its members may receive compensation in an amount not to exceed one hundred dollars (\$100) for attending each meeting of the board. A member of the board of trustees shall not receive compensation for more than four meetings of the board in a month.

(b) The board of trustees, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the amount of compensation received for attending meetings of the board.

(c) In addition, members of the board of trustees may receive their actual and necessary traveling and incidental expenses incurred while on official business other than a meeting of the board.

(d) A member of the board of trustees may waive any or all of the payments permitted by this section.

(e) For the purposes of this section, a meeting of the board of trustees includes, but is not limited to, regular meetings, special meetings, closed sessions, emergency meetings, board field trips, district public hearings, or meetings of a committee of the board.

Topic, Derivation, and Comments: Compensation and Stipends. Based on §8952 (a) and derived from Public Resources Code §5784.15.

Subdivision (a) raises the maximum stipend per meeting from the current \$50 to \$100. That's consistent with many other special districts' statutes. The language also changes the cap on monthly compensation from the current absolute limit of \$100 a month to four meetings a month. Note that subdivision (e) explains what constitutes "a meeting of the board of trustees."

Subdivision (b) gives public cemetery districts access to the 1984 statute that currently applies to nearly all water districts, plus community services districts, sanitary districts, sanitation districts, fire protection districts, and recreation and park districts.

Subdivision (c) is based on §8952 (a), except that the Working Group wanted to prohibit reimbursing trustees' costs of attending meetings of the board of trustees. The Working Group argued that the stipend was sufficient; trustees don't need expenses on top of their stipends.

Subdivision (d) allows a trustee to accept a lower stipend or no stipend at all. For example, if a board of trustees provides stipends of \$75 a meeting, a trustee could decide to accept only a \$50 stipend. Or nothing. Derived from Public Resources Code §5784.15 (d).

Subdivision (e) is an open-ended list of what constitutes "a meeting of the board of trustees." Derived from Public Resources Code §5784.15 (e).

Note that §9047 allows districts to provide fringe benefits to the trustees, and that §9048 allows districts to pay for trustees to attend conferences and training sessions.

## Chapter 4. Powers

9040. (a) A district may own, operate, improve, and maintain cemeteries and provide interment services within its boundaries.

(b) A district shall maintain the cemeteries owned by the district.

(c) The district that owns a cemetery shall have exclusive jurisdiction and control over its maintenance and management.

Topic, Derivation, and Comments: Cemeteries. Based on §8961.

Subdivision (a) is the districts' main grant of power. In addition to the verb "maintain" which is found in §8961, this language also gives the districts the power to own, improve, and operate cemeteries. Note that this language --- unlike §8961 --- limits a district to owning, operating, and maintaining cemeteries only within the district's boundaries.

Subdivision (b) is new and requires districts to maintain their own cemeteries. If a district owns a cemetery, it must maintain it. Of course, the level of maintenance still remains up to the district's board of trustees.

Subdivision (c) clarifies that the district is in charge of the cemeteries it owns; not the county board of supervisors that appoints the district's trustees.

9041. A district shall have and may exercise all rights and powers, expressed or implied, necessary to carry out the purposes and intent of this part, including, but not limited to, all of the following powers:

- (a) To sue and be sued.
- (b) To acquire by purchase, eminent domain, grant, gift, lease, or other lawful means, any real property within the district or any personal property that may be necessary or proper to carry out the purposes and intent of this part.
- (c) To sell, lease, or otherwise dispose of any real or personal property. A board of trustees may exchange equivalent properties if the board determines that the exchange is in the best interests of the district.
- (d) To donate any surplus real or personal property to any public agency or nonprofit organizations.
- (e) To engage necessary employees, to define their qualifications and duties, and to provide a schedule of compensation for performance of their duties.
- (f) To engage counsel and other professional services.
- (g) To enter into and perform all necessary contracts.
- (h) To borrow money, give security therefore, and purchase on contract, as provided in this part.
- (i) To adopt a seal and alter it at pleasure.
- (j) To adopt ordinances following the procedures of Article 7 (commencing with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 3 of the Government Code.
- (k) To adopt and enforce rules and regulations for the administration, maintenance, operation, and use of cemeteries.
- (l) To enter joint powers agreements pursuant to the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.
- (m) To provide insurance pursuant to Part 6 (commencing with Section 989) of Division 3.6 of Title 1 of the Government Code.
- (n) To provide training to trustees that will assist in the governance of the district.

[THE TEXT AND COMMENTARY CONTINUE ON THE NEXT PAGE]

(o) To appoint one or more advisory committees to make recommendations for the ownership, improvement, expansion, and the operation of cemeteries owned by the district and the provision of interment services.

(p) To take any and all actions necessary for, or incidental to, the powers expressed or implied by this part.

Topic, Derivation, and Comments: Corporate Powers. Based on Health & Safety Code §8960, §8961, §8962, §8963, and §8964. This section lists the districts' corporate powers.

The first sentence is based on §8963.

Subdivision (a) is based on §8960 and derived from Health & Safety Code §2041 (a) and Public Resources Code §5786.1 (a).

Subdivision (b) is based on §8961 and §8962 and derived from Health & Safety Code §2041 (b) and 5786.1 (b). This language maintains the provisions of §8961 and §8962 which previously confirmed a 1949 Attorney General's opinion that said that a cemetery district can acquire real property for cemetery purposes (14 Ops.Cal.Atty.Gen. 252).

Subdivision (c) is new and derived from Health & Safety Code §2041 (c). The Working Group intended this language to be broad enough to include the power to execute quitclaim deeds; see §8969.5.

Subdivision (d) is new and derived from Health & Safety Code §2041 (d).

Subdivision (e) is new and derived from Health & Safety Code §2041 (h) and Public Resources Code §5786.1 (d). This language must be read in conjunction with §9020 regarding the policy-making duties of the board of trustees.

Subdivision (f) is new and derived from Health & Safety Code §2041 (i) and Public Resources Code §5786.1 (e).

Subdivision (g) is new and based on the general authorization in §8963. This language does not require a district to adopt bidding procedures and limits for construction contracts and force account projects. This approach is consistent with the 1939 law, as interpreted by a 1948 Attorney General's opinion (11 Ops.Cal. Atty.Gen. 242). Note, however, that §9044 (a) requires a district to adopt bidding regulations for purchasing supplies and equipment.

[THE COMMENTARY CONTINUES ON THE NEXT PAGE]

Subdivision (h) is new and derived from Public Resources Code §5786.1 (g).

Subdivision (i) is based on §8960, and derived from Health & Safety Code §2041 (j) and Public Resources Code §5786.1 (h).

Subdivision (j) is new and derived from Public Resources Code §5786.1 (i).

Subdivision (k) is based on §8964 and derived from Public Resources Code §5786.1 (j).

Subdivision (l) is new and derived from Health & Safety Code §2044 (c) and Public Resources Code §5786.1 (k).

Subdivision (m) is new and derived from Health & Safety Code §2041 (k) and Public Resources Code §5786.1 (l).

Subdivision (n) is new and gives the districts clear authority to train their trustees in governance skills.

Subdivision (o) is new and gives the districts clear authority to appoint advisory committees. For example, in a rural community with few residents, a county board of supervisors could govern a district but appoint an advisory committee of nonresidents to help guide the district's operations. Note that the range of topics mirrors the language in §9001 and §9040 (a).

Subdivision (p) is based on §8963, and based on Health & Safety Code §2041 (m) and Public Resources Code §5786.1 (m).



9042. (a) When acquiring, improving, or using any real property, a district shall comply with Article 5 (commencing with Section 53090) of Chapter 1 of Part 1 of Division 2 of Title 5 and Article 7 (commencing with Section 65400) of Chapter 1 of Division 1 of Title 7 of the Government Code.

(b) When disposing of surplus land, a district shall comply with Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code.

Topic, Derivation, and Comments: Conformity to Local Ordinances and Plans. New.

Subdivision (a) reminds districts that current law requires most special districts to comply with the building ordinances and zoning ordinances of the underlying city or county (Government Code §53090), and that current law requires most special districts to comply with the general plan of the underlying city or county (Government Code §65401 and §65402). Derived from Health & Safety Code §2042 and Public Resources Code §5786.3.

Subdivision (b) reminds districts that all local agencies must follow established statutory procedures when they dispose of surplus land. Also see §9055, regarding how districts use and lease cemetery property that is held for future use and is not surplus.

9043. (a) A district shall have perpetual succession.

(b) A board of trustees may, by a two-thirds vote of its total membership, adopt a resolution to change the name of the district. The name shall contain the words “public cemetery district” or “cemetery district.” The resolution shall comply with the requirements of Chapter 23 (commencing with Section 7530) of Division 7 of Title 2 of the Government Code. Within 10 days of its adoption, the board of trustees shall file a copy of its resolution with the Secretary of State, the county clerk, the board of supervisors, and the local agency formation commission of each county in which the district is located.

(c) A district may destroy a record, paper, or document pursuant to Chapter 7 (commencing with Section 60200) of Division 1 of Title 6 of the Government Code, unless the board of trustees determines that there is a need for its retention. In determining whether there is a need for retaining a document, the board of trustees shall consider future public need, the effect on statutes of limitation, and historical significance. This subdivision does not apply to records of interments which are governed by §9064.

Topic, Derivation, and Comments: Basic Operations. Based on §8969.6 and §8963.

Subdivision (a) is new and derived from Health & Safety Code §2043 (a) and Public Resources Code §5786.9 (a). This declaration of perpetual succession is a standard provision in special districts’ statutes. It assures investors and others that a district won’t disappear, leaving them without recourse.

Subdivision (b) is based on §8969.6, and derived from Health & Safety Code §2043 (b) and Public Resources Code §5786.9 (b). Note that this language allows a district to change its name without getting approval from the county supervisors, however, it also boosts the trustees’ vote required to change a district’s name from a majority-vote to a 4/5-vote.

Subdivision (c) is new and refers to the state law that applies to the retention and destruction of all special districts’ records. Note that this language specifically exempts interment records from destruction; see §9064.

9044. (a) Each district shall adopt policies and procedures, including bidding regulations, governing the purchase of supplies and equipment. Each district shall adopt these policies and procedures by rule or regulation pursuant to Article 7 (commencing with Section 54201) of Chapter 5 of Division 2 of Title 5 of the Government Code.

(b) A district may request the State Department of General Services to make purchases of materials, equipment, or supplies on its behalf pursuant to Section 10298 of the Public Contract Code.

(c) A district may request the purchasing agent of the principal county to make purchases of materials, equipment, or supplies on its behalf pursuant to Article 7 (commencing with Section 25500) of Chapter 5 of Division 2 of Title 3 of the Government Code.

(d) A district may request the purchasing agent of the principal county to contract with persons to provide projects, services, and programs authorized by this part pursuant to Article 7 (commencing with Section 25500) of Chapter 5 of Division 2 of Title 3 of the Government Code.

Topic, Derivation, and Comments: Contracts. New.

Subdivision (a) is new and derived from Government Code §54202 and §54204 which require all special districts to adopt written purchasing policies, also derived from Health & Safety Code §2046 (a) and Public Resources Code §5786.15 (a).

Subdivision (b) is new and derived from Government Code §54205 which allows all local agencies to use the state's purchasing systems, also derived from Health & Safety Code §2046 (b) and Public Resources Code §5786.15 (b).

Subdivision (c) is new and derived from Health & Safety Code §2046 (c) and Public Resources Code §5786.15 (c). For smaller counties with populations under 200,000, the dollar limit for county purchasing agents is \$10,000 (Government Code §25502.3). In bigger counties, the purchasing agent's limit is \$100,000 (Government Code §25502.5).

Subdivision (d) is new and derived from Health & Safety Code §2046 (d) and Public Resources Code §5786.15 (d). For smaller counties with populations under 200,000, the dollar limit for county purchasing agents is \$10,000 (Government Code §25502.3). In bigger counties, the purchasing agent's limit is \$100,000 (Government Code §25502.5).

9045. (a) The Myers-Milias-Brown Act, Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code applies to all districts.

(b) A board of trustees may adopt an ordinance establishing an employee relations system that may include, but is not limited to, a civil service system or a merit system.

Topic, Derivation, and Comments: Employee Relations. New.

Subdivision (a) is new and derived from Health & Safety Code §2048 (a) and Public Resources Code §5786.19 (a). The 1963 Myers-Milias-Brown Act applies to all local agencies but the Legislature never explicitly linked it to the 1939 Law governing public cemetery districts.

Subdivision (b) is new and derived from Health & Safety Code §2048 (b) and Public Resources Code §5786.19 (b). The establishment of a formal employee relations system goes beyond the simple authorization to “engage employees” in §9041 (e).

9046. A board of trustees may require any employee or officer to be bonded. The district shall pay the cost of the bonds.

Topic, Derivation, and Comments: Employee Bonds. New and derived from Health & Safety Code §2049 and Public Resources Code §5786.25. If a district appoints a finance director to manage its funds, it must require a bond for that person; see §9077.

9047. A board of trustees may provide for any programs for the benefit of its employees and members of the board of trustees pursuant to Chapter 2 (commencing with Section 53200) of Part 1 of Division 2 of Title 5 of the Government Code.

Topic, Derivation, and Comments: Benefits. New and derived from Health & Safety Code §2050 and Public Resources Code §5786.27. Government Code §53201 already allows all local agencies to provide fringe benefits to their employees and members of their governing bodies. This language provides the statutory cross-reference. Note that these fringe benefits are in addition to any compensation received under §9031.

9048. A district may authorize the members of its board of trustees and its employees to attend professional, educational, or vocational meetings, and pay their actual and necessary traveling and incidental expenses while on official business. The payment of expenses pursuant to this section may be in addition to the payments made pursuant to Section 9031.

Topic, Derivation, and Comments: Professional Meetings. New and derived from Health & Safety Code §2051 and Public Resources Code §5786.29. This language allows trustees and employees to attend meetings and conferences to increase their knowledge and skills. Note that these expenses are in addition to any compensation received under §9031.

9049. A district may sell interment rights in its cemeteries, columbariums, and mausoleums, subject to the limitations of this part.

Topic, Derivation, and Comments: Interment Rights. Based on §8963 and §8961.13 (b).

This language substitutes the broader term “interment” for “burial,” acknowledges that districts can inter remains in cemeteries, columbariums, and mausoleums, and notes that other sections of the law limit these interments.

Although the proper plural form of the Latin noun columbarium is “columbaria,” the Working Group preferred the more familiar “columbariums.” The correct gave way to the colloquial in the March 24 amendments to SB 341.



9050. (a) A district may acquire, construct, improve, maintain, or repair a columbarium for the placement of cremated remains.

(b) A district shall comply with the Mausoleum and Columbarium Law, Part 5 (commencing with Section 9501).

(c) A district that sells interment rights in a columbarium shall require a deposit to be made in the endowment care fund pursuant to Section 9065.

Topic, Derivation, and Comments: Columbariums. Based on §8961.13, this language omits the authorization to sell interment rights in columbarium niches; that authority appears in §9049.

9051. (a) A district may acquire, maintain, or repair a mausoleum for crypt entombment that was completed on or before May 1, 1937. A district may construct additions to the mausoleum.

(b) Notwithstanding subdivision (a), the Visalia Public Cemetery District may acquire and manage the mausoleum originally constructed by the City of Visalia in 1965.

(c) Notwithstanding subdivision (a), the Arroyo Grande Cemetery District may allow a private mausoleum, as defined by Section 9504.5. The cost of construction and maintenance shall be completely borne by the person or persons for whom the private mausoleum is constructed. That person or persons shall contribute to a special care trust fund an amount of money which when invested will provide a return sufficient to assure adequate maintenance of the private mausoleum. The district shall not use public funds to construct, maintain, or repair a private mausoleum.

(d) Notwithstanding subdivision (a), a district may allow a private mausoleum, as defined by Section 9504.5, provided that the mausoleum was completed on or before January 1, 2003.

(e) A district shall comply with the Mausoleum and Columbarium Law, Part 5 (commencing with Section 9501).

Topic, Derivation, and Comments: Mausoleums. Based on §8961.7 and §9321.

Subdivision (a) is based on §8961.7 (a), with drafting changes for clarity. Note that “crypt” is defined by Health & Safety Code §7015, a definition which applies throughout Division 7, including this Part.

Subdivision (b) is based on §8961.7 (b). The second sentence of that subdivision is not necessary in light of subdivision (d) of this section.

Subdivision (c) is based on §9321, with drafting changes for clarity.

Subdivision (d) is new. The Working Group learned that a few districts have allowed private mausoleums even though they lacked the statutory authority. This language grandfathers those situations, using language that is similar to subdivisions (a) and (c). Note, however, that this language is not as restrictive as subdivision (c).

Subdivision (e) is new and based on §8961.13 (a).

9052. (a) A district may require that monuments or markers shall be placed at interment plots.

(b) A district may adopt minimum requirements for the permanency of monuments or markers.

(c) A district may cause to be purchased and placed suitable permanent monuments or markers at the interment plots of indigents, persons whose estates are insufficient to pay for the monuments or markers, or persons who have no responsible survivors to pay for the monuments or markers. A district may accept gifts or donations for the exclusive purpose of purchasing and placing these monuments or markers.

(d) A district, a member of the board of trustees, a district officer, or a district employee shall not engage in the business of selling monuments or markers.

Topic, Derivation, and Comments: Monuments and Markers.

Subdivision (a) is based on §8961.8. Note the verb “placed” instead of “erected.”

Subdivision (b) is based on §8961.8. The Working Group asked to separate the idea of requiring markers from the idea of setting minimum requirements.

Subdivision (c) is based on §8962.1 and §8962.2. Note that this language does not include the \$20 limit in the former §8962.2.

Subdivision (d) is based on §8965 and §8966. This language is an absolute prohibition.

9053. A district may sell accessory and replacement objects that are necessary or convenient to interments, including but not limited to burial vaults, liners, and flower vases, but excluding monuments or markers.

Topic, Derivation, and Comments: Appurtenances. New. This language expands on the 1974 Legislative Counsel’s opinion that says districts aren’t prohibited from selling burial vaults, liners, or flower vases (Request No. 10107, May 13, 1974; printed in the Senate Daily Journal for August 29, 1974, page 13853).

Note that the phrase, “necessary and convenient services” matches the language on the ability of a district to charge fees; see §9068.

The qualifying clause, “but excluding monuments or markers” at the end of the section reminds districts that they can’t sell monuments or markers; see §9052 (d).

9054. (a) A district may use or lease land acquired for a future cemetery for an enterprise if all of the following conditions apply:

(1) The district has filed with the county recorder a declaration of intention to use the land for a cemetery.

(2) The amount of land is reasonably necessary for the district's future requirements.

(3) The enterprise is consistent with the applicable regulations of the city or county in which the land is located.

(4) The enterprise does not permit the conduct of funeral or cemetery functions not authorized by this part.

(5) The enterprise does not prevent the future use of the land as a cemetery.

(b) A district may lease land acquired for future cemetery use to a public agency for recreational use, provided that the district has filed with the county recorder a declaration of intention to use the land for a cemetery.

(c) Nothing in this part authorizes a district to acquire or retain real property that is not reasonably necessary for the district's future requirements.

Topic, Derivation, and Comments: Interim Uses. Based on §8961.10 and §8961.11.

Subdivision (a) is based on §8961.10, with drafting changes for clarity. This language maintains the authority of the former law which superceded a 1963 Attorney General's opinion (42 Ops. Cal.Atty.Gen. 83). The resulting language is somewhat broader than the former authorization, however the conditions are somewhat narrower.

Subdivision (b) is based on the first sentence of §8961.11, with drafting changes for clarity. This language maintains the authority of the former law which superceded a 1963 Attorney General's opinion (42 Ops. Cal.Atty.Gen. 83). Districts need to remember that §9042 (a) requires them to comply with the state laws relating to local land use regulations. Recordation does not substitute for land use regulations.

Subdivision (c) is based on the second sentence of §8961.11, with drafting changes for clarity. Also see §9042 (b), relating to how districts dispose of surplus land.

9055. (a) A district may convey a cemetery owned by the district to any cemetery authority, pursuant to this section.

(b) The board of trustees of a district that proposes to convey a cemetery owned by the district to a cemetery authority shall adopt a resolution of intention that contains:

(1) A description of the cemetery that the district proposes to convey.  
 (2) The name of the cemetery authority to which the district proposes to convey the cemetery.

(3) An appendix that reports the cemetery's current assets and current liabilities and contains a reasonable projection of the district's ability to finance the ownership, improvement, expansion, and operation of the cemetery in the future.

(4) The terms and conditions of the proposed conveyance. The terms and conditions shall require all of the following:

(A) The cemetery authority maintain the cemetery as a endowment care cemetery pursuant to Sections 8738 and 8738.1.

(B) Appropriate consideration, as determined by the board of trustees.

(C) A restriction in the deed that conveys the cemetery to the cemetery authority that will permit the district or another public agency as the district's successor in interests to enter the cemetery and perform any repairs, restoration, or maintenance that the district or its successor deems necessary to protect the public interest, and will require the cemetery authority to reimburse the district or its successor for those costs.

(D) Any other terms and conditions that the board of trustees determines to be necessary to protect the public interest in the cemetery.

(5) A declaration that the proposed conveyance is in the public interest and in the best interests of the district.

(c) The board of trustees shall send its resolution of intention to the board of supervisors of the principal county.

(d) Within 60 days of receiving a resolution of intention adopted pursuant to subdivision (b), the board of supervisors shall hold a public hearing on the proposed conveyance. The board of supervisors shall give notice of its hearing by publishing a notice pursuant to Section 6064 of the Government Code in at least one newspaper of general circulation within the jurisdiction of the district at least 30 days before the hearing. The board of supervisors shall post the public notice in at least three public places within the jurisdiction of the district, at least 30 days before the hearing. One of the public places shall be at the cemetery that the district proposes to convey, and one of the public places shall be at the offices of the district. In addition, the board of supervisors shall mail the notice at least 30 days before the hearing to the district, the cemetery authority, and any other person who has filed written request for notice with the clerk of the board of supervisors.

(e) At its hearing, the board of supervisors shall receive and consider any written or oral comments regarding the proposed conveyance of the cemetery. At the conclusion of the hearing, the board of supervisors shall make a finding regarding the value of written protests filed and not withdrawn and take one of the following actions:

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(1) If the written protests filed and not withdrawn are at least 50 percent of the registered voters of the district or property owners owning at least 50 percent of the assessed value of the land within the district, the board of supervisors shall adopt a resolution that terminates the proceedings to convey the cemetery.

(2) If the written protests filed and not withdrawn are less than 50 percent of the registered voters of the district or property owners owning less than 50 percent of the assessed value of the land within the district, the board of supervisors may by a four-fifths vote adopt a resolution that concurs in the conveyance of the cemetery to the cemetery authority.

(f) The board of supervisors shall send copies of its resolution adopted pursuant to subdivision (e) to the district and the cemetery authority.

(g) If the board of supervisors adopts a resolution that concurs in the proposed conveyance of the cemetery, the board of trustees may order the conveyance of the cemetery to the cemetery authority, subject to the terms and conditions set by the board of trustees and concurred in by the board of supervisors.

Topic, Derivation, and Comments: Cemetery Conveyance. Based on §8963.5 to §8963.9. This section allows a district to convey a district cemetery to cemetery authority (defined at §7018). The Working Group learned that the only known sale of a district cemetery was by the Orange County Cemetery District.

Subdivision (a) is based on §8963.5.

Subdivision (b) is based on §8963.5 and new material. The April 8 amendments to SB 341 expanded these requirements. Paragraph (3) requires the district to provide information about the cemetery's financial condition. Paragraph (4) spells out the minimum terms and conditions, including "appropriate consideration." Note that paragraph (5) requires a dual declaration --- the conveyance must be both in the public interest (new language) and in the district's best interests (based on §8963.5).

Subdivision (c) is new, providing a procedural bridge between subdivisions (b) and (d).

Subdivision (d) is based on §8963. The language is similar to §9026 (c), but the April 8 amendments to SB 341 increased the public notice period from 10 days to 30 days.

Subdivision (e) is based on §8963.6, §8963.8, and §8963.9, and derived from Government Code §57078, relating to counting protests at a LAFCO's conducting authority hearing. Note that the Working Group wanted to keep the current requirement for a 4/5-vote by the county supervisors.

Subdivision (f) is new, providing a procedural bridge between subdivisions (e) and (g).

Subdivision (g) is based on §8963.5.

9056. (a) A district may dedicate real property or an interest in real property owned by the district to another public agency for use as roads or utility rights-of-way, including but not limited to water, sewer, drainage, gas or electricity transmission, or communications purposes, pursuant to this section.

(b) The board of trustees of a district that proposes to dedicate real property or an interest in real property owned by the district to another public agency shall adopt a resolution of intention that contains:

- (1) A description of the real property or interest in real property.
- (2) The name of the public agency to which the district proposes to dedicate the property.
- (3) The terms and conditions, including any consideration, of the proposed dedication.
- (4) Findings, based on substantial evidence in the record:
  - (A) That the real property has never been used for interments.
  - (B) That no interment rights have been sold or leased for the real property.
  - (C) That the district does not need the property for cemetery purposes.
- (5) A statement of the reason or reasons for the proposed dedication.
- (6) A declaration that the proposed dedication is in the public interest and in the best interests of the district.

(c) Within 60 days of adopting a resolution of intention pursuant to subdivision (b), the board of trustees shall hold a public hearing on the proposed dedication. The board of trustees shall give notice of its hearing by publishing a notice pursuant to Section 6061 of the Government Code in at least one newspaper of general circulation within the jurisdiction of the district at least 10 days before the hearing. The board of trustees shall post the public notice in at least three public places within the jurisdiction of the district, at least 10 days before the hearing. One of the public places shall be at the real property that the district proposes to dedicate, and one of the public places shall be at the offices of the district. In addition, the board of trustees shall mail the notice at least 10 days before the hearing to the other public agency and any other person who has filed written request for notice with the board of trustees.

(d) If the board of trustees adopts a resolution that dedicates the real property to another public agency, the board of trustees shall promptly execute a deed of dedication and send the deed to the other public agency. The dedication is effective when the other public agency records the deed of dedication with the county recorder of the county in which the real property is located.

Topic, Derivation, and Comments: Dedication of Property. Based on §8967, §8967.5, §8968, §8968.5, and §8969. This language allows a district to dedicate property to another public agency for utility use.

[THE COMMENTARY CONTINUES ON THE NEXT PAGE]



Subdivision (a) is based on §8967. Note that the language substitutes “another public agency” for the 1939 Law’s long description of the other public agencies. Note that the language adds “roads and or utility rights-of-way” and then adds “gas or electricity transmission, or communications purposes” to the list of allowed uses.

Subdivision (b) is based on §8967.5 and new. Note that the language expands the required contents of the resolution of intention.

Subdivision (c) is based on §8968 and new. Note that the language specifies where the district must post its notices, and extends the newspaper publication period from five days to ten days.

Subdivision (d) is based on §8968.5.

## Chapter 5. Interments

9060. (a) A district shall limit interment in a cemetery owned by the district to interment in the ground, in columbariums, and in mausoleums, as provided in this part.

(b) A district shall limit interments to:

- (1) Persons who are residents of the district.
- (2) Persons who are former residents of the district and who acquired interment rights while they were residents of the district.
- (3) Persons who pay property taxes on property located in the district.
- (4) Persons who formerly paid property taxes on property located in the district and who acquired interment rights while they paid those property taxes.
- (5) Eligible nonresidents of the district, as provided in this chapter.
- (6) Persons who are family members of any person described in this subdivision.

Topic, Derivation, and Comments: Interment Rights. Based on §8961, §8961.7, and §8961.13.

Subdivision (a) provides the basic authority for districts to inter people. Note that the language uses the term “inter” instead of “burial” in the 1939 Law. The Working Group believed that “inter” is a broader term that includes the placement of human remains in columbariums and mausoleums.

Subdivision (b) limits the persons whom a district may inter.

- Paragraphs (1) through (4) are based on §8961, with drafting changes for clarity.
- Note that paragraphs (3) and (4) refer to people who pay “property taxes on property located in the district” because after Proposition 13, property owners no longer pay property taxes directly to the district.
- Paragraph (5) is a place-holder and refers to §9061.
- Paragraph (6) is based on §8961. The definition of “family member” is in §9002 (c) which was derived from §1569.145. Although the words in §9002 (c) are different from §8961, the coverage is the same.

9061. (a) A district may inter a person who is not a resident of the district or a person who does not pay property taxes on property located in the district in a cemetery owned by the district if all of the following apply:

(1) The district has an endowment care fund that requires at least the minimum payment set pursuant to Section 9065.

(2) The district requires the payment of a nonresident fee set pursuant to Section 9068. A board of trustees may adopt a written policy that permits waiving the payment of the nonresident fee for a nonresident who had purchased an interment right while a resident or a taxpayer.

(3) The person meets the conditions listed in one or more of subdivisions (b) through (e).

(b) A person is an eligible nonresident pursuant to paragraph (5) of subdivision (b) of Section 9060 if the person is a family member of a person who is already interred in a cemetery owned by the district or is a family member of a person who has acquired interment rights in a cemetery owned by a district.

(c) A person is an eligible nonresident pursuant to paragraph (5) of subdivision (b) of Section 9060 if all of the following apply:

(1) The person was a resident of the district or paid property taxes on property located in the district for continuous period of at least five years, a portion of which time period shall have occurred within the 10 years immediately before the person's death.

(2) The district receives a written request for the interment of the person from a person who is a resident of the district or who pays property taxes on property located within the district, and the person submitting the written request is not a trustee, officer, or employee of the district and is not a funeral director or an employee of a funeral director.

(3) The board of trustees determines that the cemetery has adequate space for the foreseeable future.

(d) A person is an eligible nonresident pursuant to paragraph (5) of subdivision (b) of Section 9060 if all of the following apply:

(1) The person was a resident of California at the time of death.

(2) There is no private cemetery within a straight-line radius of 15 miles of the person's residence.

(3) There is no private cemetery nearer to the person's residence than the nearest cemetery owned by the district.

(4) The distances shall be measured in a straight line from the person's residence to the nearest private cemetery and the nearest cemetery owned by the district.

(e) A person is an eligible nonresident pursuant to paragraph (5) of subdivision (b) of Section 9060 if all of the following apply:

(1) The person died while either:

(A) Serving in the armed forces or the active militia, or

(B) In the line of duty as a peace officer or firefighter.

(2) The board of trustees determines that the cemetery has adequate space for the foreseeable future.

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Topic, Derivation, and Comments: Nonresident interments. This section describes the conditions under which a district may inter nonresidents.

Subdivision (a) is based on §8961.1 (c) and (d), with drafting changes for clarity. Note that the first sentence of (a)(2) requires districts to charge nonresident fees. This language requiring nonresident fees deliberately supercedes the 1978 Legislative Counsel's opinion that concluded "a public cemetery district may not charge a nonresident fee for the interment of a deceased vested former resident" under the 1939 Law (Request Number 12648, August 6, 1976, to Assembly-member Kenneth L. Maddy). The second sentence of (a)(2) allows a district to waive the nonresident fee for nonresidents who had previously bought interment rights.

Subdivision (b) is based on §8961.1, with drafting changes for clarity.

Subdivision (c) is based on §8961.1 (b) and (e), with drafting changes for clarity.

Subdivision (d) is based on §8961.2 and §8961.3, with drafting changes for clarity.

Subdivision (e) is based on §8961.5, with drafting changes for clarity. The definitions appear in §9002.

9062. Notwithstanding §9060, the board of trustees may contract with any county in which the district is located to inter persons for whose interment the county is responsible pursuant to Chapter 10 (commencing with Section 27460) of Division 2 of Title 3 of the Government Code or Chapter 3 (commencing with Section 7100) of Part 1 of Division 7 of this code, if all of the following apply:

(a) The board of trustees determines that the cemetery has adequate space for the foreseeable future.

(b) The district has an endowment care fund that requires at least the minimum payment set pursuant to Section 9065.

(c) The contract requires the county to pay the costs of the interment, including a payment to the district's endowment care fund.

Topic, Derivation, and Comments: Indigent Interments. Based on §8961.6.

This section sets out the conditions under which a district can inter indigents. Based on the Working Group's advice, the language deliberately omits the requirement that the indigent person must be a "nonresident."

Subdivision (a) is based on the first paragraph of §8961.6, with drafting changes for clarity. Note that the required finding differs from §8961.6 by substituting the phrase "adequate space" for the phrase "more space available." The "adequate space" standard mirrors the language in §9061 (c) and (e). The statutory cross-references help district officials understand the counties' duties for interring bodies.

Subdivision (b) is new. The language is similar to §9061 (a)(1), a key condition for nonresident interments. This language is needed in order to make subdivision (c) meaningful.

Subdivision (c) is based on the second paragraph of §8961.6. Note that the language uses the term "payment" instead of "deposit." That choice of words avoids any ambiguity that the county's payment might be refundable; it's not.

9063. Notwithstanding Section 9060, the Oroville Cemetery District may use its cemetery on Feather River Boulevard, north of Oro Dam Boulevard for up to a total of 100 interments, for interment in the ground of any person who is not a resident of the district if all of the following apply:

(a) The board of trustees determines that the cemetery has adequate space for the foreseeable future.

(b) The district has an endowment care fund that requires at least the minimum payment set pursuant to Section 9065.

(c) The district requires the payment of a nonresident fee set pursuant to Section 9068.

Topic, Derivation, and Comments: Oroville Cemetery District's nonresident burials. Based on §8961.12.

This language maintains the authority of the former law which superceded a 1981 Attorney General's opinion (64 Ops.Cal.Atty.Gen. 905).

9064. (a) The board of trustees shall cause to be prepared and maintained accurate and current records of:

(1) The cemeteries owned by the district, showing the location of the sites where persons have acquired interment rights, including the names and addresses of the persons who have acquired these interment rights, and the location of plots where interment rights are available for acquisition.

(2) All remains interred in cemeteries owned by the district, including the name of each person, his or her age at the time of death, place of death, date of interment, the interment plot, and the name and address of the funeral director.

(b) A district may keep the records required by this section in their original form or by any other method that can produce an accurate reproduction of the original record.

Topic, Derivation, and Comments: Interment Records. Based on §8110, §8963, and new.

Subdivision (a) is based on §8963. Paragraph (1) is based on the second paragraph of §8963. Note that this language is similar to the requirement that applies to other cemeteries in §8110. Paragraph (2) is based on the third paragraph of §8963.

Subdivision (b) is new and derived from §8112.

Note that §9043 (b) that allows a district to destroy certain records does not apply to these interment records. Nothing in the new Law allows a district to dispose of these interment records --- they must be kept in perpetuity.

9065. (a) The board of trustees shall create an endowment care fund.

(b) The board of trustees shall require a payment into the endowment care fund for each interment right sold. The amount of the payment shall be not less than the minimum amounts set by Section 8738.

(c) The board of trustees may require a payment into the endowment care fund for each interment where no payment has previously been made. The amount of the payment shall be not less than the minimum amounts set by Section 8738.

(d) The board of trustees may pay into the endowment care fund any money from the district's general fund and from any other sources which is necessary or expedient to provide for the endowment care of the cemeteries owned by the district.

(e) The board of trustees shall not spend the principal of the endowment care fund.

(f) The board of trustees shall cause the income from the endowment care fund to be deposited in an endowment income fund and spent solely for the care of the cemeteries owned by the district.

Topic, Derivation, and Comments: Endowment Care Fund. Based on §9000, §9003, and §9005.

The language in subdivision (a), like the 1984 amendments to the former §9000, mandates endowment care funds, reversing the 1958 Attorney General's opinion (32 Ops.Cal.Atty.Gen. 184).

Subdivision (b) is based on the second paragraph of §9000 and the second paragraph of §8961.4.

Subdivision (c) is new. The language deliberately supercedes Legislative Counsel's 1989 opinion that said the law did not allow a district to charge an endowment care fee for a burial plot purchased before the state law required endowment care funds (Request Number 2205, June 8, 1989, to Assemblymember Stan Statham).

Subdivision (d) is based on the second part of the first paragraph of §9000.

Subdivision (e) is based on §9003.

Subdivision (f) is based on §9005, with drafting changes for clarity. The districts can use the fund's income to generally take care of their cemeteries. This language maintains the authority described in a 1995 Attorney General's opinion (78 Ops.Cal.Atty.Gen. 189). In that opinion, Footnote 2 refers to an informal 1971 opinion which listed the permitted uses of a similar cemetery trust fund (Cal.Atty.Gen. Indexed Letter No. IL 71-111 [May 12, 1971]).



9066. The board of trustees shall cause the principal of the endowment care fund to be invested and reinvested in:

(a) Securities and obligations designated by Section 53601 of the Government Code.

(b) Obligations of the United States or obligations for which the faith and credit of the United States are pledged for the payment of principal and interest. These shall not be limited to maturity dates of one year or less.

(c) Obligations issued under authority of law by any county, municipality, or school district in this state for which are pledged the faith and credit of that county, municipality, or school district for the payment of principal and interest, if within 10 years immediately preceding the investment that county, municipality, or school district was not in default for more than 90 days in the payment of principal or interest upon any legally authorized obligations issued by it.

(d) Obligations of the State of California or those for which the faith and credit of the State of California are pledged for the payment of principal and interest.

(e) Interest-bearing obligations issued by a corporation organized under the laws of any state, or of the United States, provided that they bear a Standard and Poor's financial rating of AAA at the time of the investment.

(f) Certificates of deposit or other interest-bearing accounts in any bank in this state insured by the Federal Deposit Insurance Corporation.

(g) Investment certificates or shares in any state or federally chartered savings and loan association insured by the Federal Savings and Loan Insurance Corporation.

Topic, Derivation, and Comments: Endowment Care Fund Investments. Based on §9002, with drafting changes for clarity.

Note that this language clearly assigns the responsibility for investing the principal of the endowment care fund with the district's board of trustees. Contra Costa County has reportedly taken the position that the county treasurer must invest these funds because §9002 says the "trustees may invest" the money. This language places that duty with the board of trustees. The trustees may ask the county treasurer to invest the money, direct its own district treasurer to invest the money (see §9077), or assign the investment duty to another party. This language reverses the 1949 Attorney General's opinion that said that the county treasurer was the repository for the endowment care funds (14 Ops.Cal.Atty.Gen. 99).

9067. The board of trustees may cause the funds deposited in the endowment income fund pursuant to subdivision (f) of Section 9065 that are not required for the immediate care of the cemeteries owned by the district to be invested in the securities and obligations designated by Section 53601 of the Government Code.

Topic, Derivation, and Comments: Endowment Income Fund Investments. New.

At its December 13, 2002 meeting at the request of Dewey Ausmus and Anna Herrera, the Working Group agreed on a new section that clearly allows districts to invest their temporarily idle money in the Endowment Income Fund in short- and medium-term securities, just like the temporarily idle funds of other local agencies. A district could use this section to invest on its own or place its idle money in a county treasurer's pool. This language reverses the 1949 Attorney General's opinion that said that the county treasurer was the repository for the endowment care funds (14 Ops.Cal.Atty.Gen. 99).

9068. (a) The board of trustees shall adopt a schedule of fees for interments in cemeteries owned by the district and for other necessary and convenient services.

(b) The board of trustees shall also adopt a schedule of fees for nonresidents. The board of trustees shall set these fees at an amount that at least equals the amount of fees charged to residents or taxpayers and shall include a nonresident fee of at least 15 percent of that amount.

Topic, Derivation, and Comments: Interment Fees.

Subdivision (a) is based on §8961.4, first paragraph, with drafting changes for clarity. Note that the phrase “necessary and convenient services” matches the language that allows districts to provide services; see §9054.

Subdivision (b) is based on §8894 (a) and (b), with drafting changes for clarity.

9069. (a) A district may seek the abandonment of an interment plot in a cemetery owned by the district pursuant to this section.

(b) The board of trustees shall file a petition with the superior court of the principal county which contains all of the following:

(1) An identification of the interment plot that the district desires to be declared abandoned.

(2) A statement that the district has made a diligent search to locate the present owner of the interment plot.

(3) A statement that the present owner of the interment plot is unknown to the district.

(4) A statement that, to the best knowledge of the district, at least 50 years have passed since any portion of the interment plot has been used for interment purposes.

(5) A statement that, after a reasonable physical investigation of the interment plot, the interment plot has not been used for the interment of human remains.

(6) A request that the court declare the interment plot abandoned.

(c) Upon the filing of a petition pursuant to subdivision (b), the clerk of the superior court shall set a time for a hearing on the petition.

(d) After the clerk of the superior court has set the hearing, the district shall give notice of the court's hearing. The notice shall identify the interment plot that the district desires to be declared abandoned, state the name and address of the last known owner of the interment plot, state that the court will hold a hearing to determine whether to declare the interment plot abandoned, and state the time and place of the court's hearing. The district shall give notice of the court's hearing by publishing a notice pursuant to Section 6061 of the Government Code in at least one newspaper of general circulation within the jurisdiction of the district at least 10 days before the hearing. The district shall post the public notice in at least three public places within the jurisdiction of the district, at least 10 days before the hearing. One of the public places shall be at the interment plot that the district desires to be declared abandoned, and one of the public places shall be at the offices of the district. In addition, the district shall mail the notice by certified mail, return receipt requested, at least 10 days before the hearing to the last known owner of the interment plot.

(e) At the time set for the hearing, the superior court shall hear and consider any evidence that is introduced in favor or, and any objections to, the abandonment of the interment plot. The court may continue its hearing from time to time. The court shall determine from the evidence presented whether the facts stated in the district's petition are true. The court shall dismiss any portion of the district's petition if the court determines that any of the facts stated in that portion of the petition are not true, or if the court determines the identity of the present owner of the interment plot. If the court determines that the facts stated in the district's petition are true, the court may order that the interment plot shall be deemed abandoned and full title shall revert to the district. The superior court's order shall not become final until one year after the date on which the court made its order.

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(f) Within 30 days after the date on which the superior court made its order, the district shall give notice of the court's order. The notice shall identify the interment plot that the district desires to be declared abandoned, state the name and address of the last known owner of the interment plot, and state the date on which the court's order will be final. The district shall give notice of the court's order by publishing a notice pursuant to Section 6061 of the Government Code in at least one newspaper of general circulation within the jurisdiction of the district. The district shall post the public notice in at least three public places within the jurisdiction of the district. One of the public places shall be at the interment plot that the district desires to be declared abandoned, and one of the public places shall be at the offices of the district. In addition, the district shall mail the notice by certified mail, return receipt requested, to the last known owner of the interment site.

(g) At any time before the superior court's order becomes final, any person may petition the court to reopen the proceeding. Upon receiving a petition and after giving notice to the district, the court may reopen the proceeding. The court may hear and consider any additional evidence regarding the facts in the district's petition. The court may amend its previous order. If the court determines that any of the facts stated in any portion of the district's petition are not true, or if the court determines the identify of the present owner of the interment plot, the court shall dismiss that portion of the district's petition.

(h) The interment plot shall be deemed abandoned on the date on which the superior court's order becomes final. The district shall record the court's order in the office of the county recorder of the county in which the interment plot is located. Upon recordation of the court's order, the district is the owner of the interment plot and the district may resell the interment rights.

(i) If, after the proceedings taken pursuant to this section, the district discovers the presence of human remains in the interment plot, the district shall make reasonable efforts to identify the remains. The district shall close and appropriately mark the interment plot. The district shall offer the new owner of the interment rights in that interment plot comparable interment rights in another interment plot. The district shall not be liable for any claims for damages if the district has proceeded pursuant to this section.

Topic, Derivation, and Comments: Abandoned Interment Sites. Based on §9300 through §9309.

Subdivision (a) is based on §9301 and provides the basic authorization to abandon an interment site.

Subdivision (b) is based on §9301, §9302, and §9303. This language brings together all six of the required contents of the district's petition for abandonment.

[THE COMMENTARY CONTINUES ON THE NEXT PAGE]

Subdivision (c) is based on the second paragraph of §9303. The Working Group requested that the new language eliminated the 1939 Law's deadlines for the court's hearing.

Subdivision (d) is based on §9304. This language tells the district how to give notice of the court's hearing. Note that the mailed notice is now by certified mail, return receipt requested, not registered mail.

Subdivision (e) is based on §9305, §9306, and §9307. This language describes the court's hearing and its possible determinations. Note that if the court finds that the district's facts aren't true, the court must deny that part of the request. If the facts are true, the court may order the abandonment but it still has the discretion to deny the district's request.

Subdivision (f) is based on §9307. This language tells the district how to give notice of the court's order. Note that the mailed notice is now by certified mail, not registered mail.

Subdivision (g) is based on §9308. This language allows anyone to come back to the court during the one-year waiting period. Just as with subdivision (e), the court must deny any part of the district's request if the facts aren't true.

Subdivision (h) is based on §9309, plus new language that requires the district to record the court's order (derived from §9224 of the 1939 Law).

Subdivision (i) is new. The Working Group requested new language that explains what the district must do if it discovers remains in the interment plot. Note that the new language protects the district from lawsuits if it's followed the law.

## Chapter 6. Finances.

9070. (a) On or before August 30 of each year, the board of trustees shall adopt a final budget, which shall conform to the accounting and budgeting procedures for special districts contained in Subchapter 3 (commencing with Section 1031.1) of, and Article 1 (commencing with Section 1121) of Subchapter 4 of Division 2 of Title 2 of the California Code of Regulations.

(b) The board of trustees may divide the annual budget into categories, including, but not limited to:

- (1) Maintenance and operation.
- (2) Employee compensation.
- (3) Interest and redemption for indebtedness.
- (4) Restricted reserves for the following categories.
  - (A) Endowment income fund.
  - (B) Capital outlay.
  - (C) Pre-need.
  - (D) Contingencies.
- (5) Unallocated general reserve.

(c) The board of trustees shall forward a copy of the final budget to the auditor of each county in which the district is located.

Topic, Derivation, and Comments: Annual Budget. Based on §8970 and derived from Health & Safety Code §2070 and Public Resources Code §5788 and §5788.5.

The Working Group asked to:

- Call the annual spending document the “final budget.”
- Postpone the budget adoption deadline from August 1 to August 30.
- List the types of permitted reserve accounts.

Subdivision (b) makes explicit the authority implicitly found by a 1959 Attorney General’s opinion (34 Ops.Cal.Atty.Gen. 267).

9071. (a) In its annual budget, the board of trustees may establish one or more restricted reserves. When the board of trustees establishes a restricted reserve, it shall declare the exclusive purposes for which the funds in the reserve may be spent. The funds in the restricted reserve shall be spent only for the exclusive purposes for which the board of trustees established the restricted reverse. The reserves shall be maintained according to generally accepted principles.

(b) Any time after the establishment of a restricted reserve, the board of trustees may transfer any funds to that restricted reserve.

(c) If the board of trustees finds that the funds in a restricted reserve are no longer required for the purpose for which the restricted reserve was established, the board of trustees may, by a four-fifths vote of the total membership of the board of trustees, discontinue the restricted reserve or transfer the funds that are no longer required from the restricted reserve to the district's general fund.

Topic, Derivation, and Comments: Restricted Reserve. New and derived from Health & Safety Code §2071 and Public Resources Code §5788.9.



9072. (a) On or before July 1 of each year, the board of trustees shall adopt a resolution establishing its appropriations limit and make other necessary determinations for the following fiscal year pursuant to Article XIII B of California Constitution and Division 9 (commencing with Section 7900) of the Government Code.

(b) Pursuant to subdivision (c) of Section 9 of Article XIII B of the California Constitution, this section shall not apply to a district which existed on January 1, 1978, and that did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of twelve and one-half cents (\$0.125) per one hundred dollars (\$100) of assessed value.

Topic, Derivation, and Comments: Annual Appropriations Limit. New and derived from Health & Safety Code §2072 and Public Resources Code §5788.11. The voters passed Proposition 4 (the 1979 Gann Initiative) which constitutionally required nearly all local governments to set an annual appropriations limit (the “Gann limit”). See California Constitution, Article XIII B.

Subdivision (a) refers to the uniform statutory procedures for setting appropriations limits.

Subdivision (b) notes that Proposition 4 exempted some special districts from the requirement to adopt annual appropriations limits; see California Constitution, Article XIII B, §9 (c). Some public cemetery districts may qualify for this exemption. Districts will need to examine their old fiscal records to determine if their 1977-78 tax rates were low enough to qualify for this exemption.

9073. The auditor of each county in which a district is located shall allocate to the district its share of property tax revenue pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

Topic, Derivation, and Comments: Property Tax Allocation. Based on §8970, §8971, §8972, §8973, §8980, §8981, §8982, §8983, and derived from Health & Safety Code §2073 and Public Resources Code §5788.13.

The voters passed Proposition 13 in 1978 and repealed the ability of local agencies to set their own property tax rates. The 1% maximum property tax rate is fixed by Article XIII A, §1 (a) of the California Constitution. The Legislature has adopted statutes that tell county auditor-controllers how to allocate the resulting revenues. This language cross-references that existing statute.

9074. (a) A district may accept any grants, goods, money, property, revenue, or services from any federal, state, regional, or local agency or from any person for any lawful purpose of the district.

(b) In addition to any other existing authority, a district may borrow money and incur indebtedness pursuant to Article 7 (commencing with Section 53820), Article 7.5 (commencing with Section 53840), Article 7.6 (commencing with Section 53850), and Article 7.7 (commencing with Section 53859) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

Topic, Derivation, and Comments: Contributions and Borrowing. New and derived from Health & Safety Code §2074 and Public Resources Code §5788.17.

Subdivision (a) allows districts to accept any kind of help from any public agency or private source.

Subdivision (b) allows districts to engage in short-term borrowing (“dry period loans”) by using the standard statutes that apply to all local governments. This language makes explicit the conclusion of the 1963 Attorney General’s opinion that said that a district can use the standard Government Code provisions to borrow against its anticipated funds (42 Ops.Cal.Atty.Gen. 125).

9075. All claims for money or damages against a district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

Topic, Derivation, and Comments: Claims. Based on §9010, and derived from Health & Safety Code §2075 and Public Resources Code §5788.23.

9076. (a) All claims against a district shall be audited, allowed, and paid by the board of trustees by warrants drawn on the county treasurer.

(b) As an alternative to subdivision (a), the board of trustees may instruct the county treasurer to audit, allow, and draw his or her warrant on the county treasury for all legal claims presented to him or her and authorized by the board of trustees.

(c) The county treasurer shall pay the warrants in the order in which they are presented.

(d) If a warrant is presented for payment and the county treasurer cannot pay it for want of funds in the account on which it is drawn, the treasurer shall endorse the warrant, "NOT PAID BECAUSE OF INSUFFICIENT FUNDS" and sign his or her name and the date and time the warrant was presented. From that time until it is paid, the warrant bears interest at the maximum rate permitted pursuant to Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code.

Topic, Derivation, and Comments: Paying Claims and Warrants. New and derived from Health & Safety Code §2076 and Public Resources Code §5788.23 (b), (c), and (d). The language explains how can districts pay their bills with county treasurers' warrants.

Also see §9077 which allows larger districts to manage their own funds.

9077. (a) Notwithstanding Section 9076, a district that has total annual revenues greater than five hundred thousand dollars (\$500,000) may withdraw its funds from the control of the county treasurer pursuant to this section.

(b) The board of trustees shall adopt a resolution that does each of the following:

(1) States its intent to withdraw its funds from the county treasury.

(2) Adopt a procedure for the appointment of a district treasurer. The board of trustees may appoint the district treasurer, or the board of trustees may delegate the appointment of the district to the district's general manager. The district treasurer may be a member of the board of trustees, the secretary of the board of trustees, the general manager, or a district employee.

(3) Fix the amount of the bond for the district treasurer and other district employees who will be responsible for handling the district's finances.

(4) Adopt a system of accounting and auditing that shall completely and at all times show the district's financial condition. The system of accounting and auditing shall adhere to generally accepted accounting principles.

(5) Adopt a procedure for drawing and signing warrants, provided that the procedure adheres to generally accepted accounting principles. The procedure shall provide that bond principal and salaries shall be paid when due. The procedure may provide that warrants to pay claims and demands need not be approved by the board of trustees before payment if the district treasurer determines that the claims and demands conform to the district's approved budget.

(6) Designate a bank or a savings and loan association as the depository of the district's funds. A bank or savings and loan association may act as a depository, paying agent, or fiscal agency for the holding or handling of the district's funds, notwithstanding the fact that a member of the board of trustees whose funds are on deposit in that bank or savings and loan association is an officer, employee, or stockholder of that bank or saving and loan association, or of a holding company that owns any of the stock of that bank or savings and loan association.

(c) The board of trustees and the board of supervisors of the principal county shall determine a mutually acceptable date for the withdrawal of the district's funds from the county treasury, not to exceed 15 months from the date on which the board of trustees adopts its resolution.

(d) In implementing this section, the district shall comply with Article 1 (commencing with Section 53600) and Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code. Nothing in this section shall preclude the district treasurer from depositing the district's funds in the county treasury of the principal county or the State Treasury pursuant to Article 11 (commencing with Section 16429.1) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

(e) The district treasurer shall make annual or more frequent written reports to the board of trustees, as the board of trustees shall determine, regarding the receipts and disbursements and balances in the accounts controlled by the district treasurer. The district treasurer shall sign the reports and file them with the secretary.

[THE COMMENTARY APPEARS ON THE NEXT PAGE]

Topic, Derivation, and Comments: District Treasurer. New and derived from Health & Safety Code §2077 and Public Resources Code §5784.9.

Districts with revenues over \$500,000 can appoint their own treasurers and manage their own funds. Table 4 on page 118 lists the 23 cemetery districts that probably qualify.

Note that a “depository” is a *person* to whom something is entrusted, while a “depository” is the *place* where something is put for safekeeping.

9078. A district may establish a revolving fund to pay any authorized expenditures of the district, pursuant to Article 15 (commencing with Section 53950) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

Topic, Derivation, and Comments: Revolving Fund. New and derived from Health & Safety Code §2078.

Existing law allows special districts to get cash advances from the county treasurer so the districts can make change and pay small bills directly. Government Code §53961 allows cemetery districts to have larger revolving funds than most special districts. Placing the cross-reference in this section will remind the districts' officials of the opportunity to set up revolving funds.



9079. (a) The board of trustees shall provide for regular audits of the district's accounts and records and the district's endowment care fund pursuant to Section 26909 of the Government Code.

(b) The board of trustees shall provide for the annual financial reports to the Controller pursuant to Article 9 (commencing with Section 53890) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

Topic, Derivation, and Comments: Audits and Reports. Based on §8990 and §8991, and derived from Health & Safety Code §2079 and Public Resources Code §5788.25.

This language explicitly refers to two existing requirements that already apply to all special districts. Placing the correct statutory cross-references in the new law is an improvement over the obsolete language in the 1939 Law.

## **Chapter 7. Alternative Revenues**

9080. Whenever a board of trustees determines that the amount of revenues available to the district or any of its zones is inadequate to meet the costs of providing facilities, programs, projects, and services, the board of trustees may raise revenues pursuant to this chapter or any other provision of law.

Topic, Derivation, and Comments: Revenue Authority. New and derived from Health & Safety Code §2080 and Public Resources Code §5789.

Many of the alternative revenue sources listed in this article are already available to the districts but this chapter serves as a “billboard” to remind the districts about their statutory alternatives. The districts can use these alternative revenues to pay for current operations and maintenance costs or for the capital needed to buy more cemetery land or improve property.

9081. A district may levy special taxes pursuant to:

(a) Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. The special taxes shall be applied uniformly to all taxpayers or all real property within the district, except that unimproved property may be taxed at a lower rate than improved property.

(b) The Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code.

Topic, Derivation, and Comments: Special Taxes.

The California Constitution requires special districts to obtain 2/3-voter approval before they can levy special taxes (Article XIII A, §4 and Article XIII C, §2).

Subdivision (a) is based on §8981.5.

Subdivision (b) is new and derived from Health & Safety Code §2081 and Public Resources Code §5789.1. The Mello-Roos Act already allows local agencies, including cemetery districts, to finance public works with special taxes.

9082. (a) Whenever a board of trustees determines that it is necessary to incur a general obligation bond indebtedness for the acquisition or improvement of real property, the board of trustees may proceed pursuant to Article 11 (commencing with Section 5790) of Chapter 4 of Division 5 of the Public Resources Code. For the purposes of that article, the board of trustees shall be considered the board of directors of the district.

(b) Notwithstanding subdivision (a), a district shall not incur indebtedness that exceeds 2 percent of the assessed value of all taxable property in the district at the time the bonds are issued.

Topic, Derivation, and Comments: General Obligation Bonds. New and derived from Public Resources Code §5790.

The 1939 Law did not let the districts ask their voters if they are want to borrow money with general obligation (G.O.) bonds. The California Constitution requires 2/3-voter approval before a local government can issue G.O. bonds (Article XIII A, §1 [b][2]).

Subdivision (a) lets cemetery districts to follow the same procedures that recreation and park districts use to issue G.O. bonds. Providing the statutory authorization and cross-reference avoids the need to repeat 17 separate statutory sections. A public cemetery district would proceed as if it were a recreation and park district.

Subdivision (b) caps a district's general obligation bonds at 2% of the district's assessed value.

9083. (a) In addition to the other fees authorized by this part, a board of trustees may charge a fee to cover the cost of any other service that a district provides or the cost of enforcing any regulation for which the fee is charged. No fee charged pursuant to this section shall exceed the costs reasonably borne by the district in providing the service or enforcing the regulation for which the fee is charged.

(b) Notwithstanding Section 6103 of the Government Code, a board of trustees may charge a fee authorized by this section to other public agencies.

(c) A board of trustees may charge residents or persons who pay property taxes on property located in the district a fee authorized by this section which is less than the fee that it charges to nonresidents or nontaxpayers.

(d) A board of trustees may authorize district employees to waive the payment, in whole or part, of a fee authorized by this section when the board of trustees determines that that payment would not be in the public interest. Before authorizing any waiver, the board of trustees shall adopt a resolution that specifies the policies and procedures governing waivers.

Topic, Derivation, and Comments: Fees. New and derived from Health & Safety Code §2085 and Public Resources Code §5789.5.

Subdivision (a) repeats the constitutional standard that a fee can't exceed the cost. This language excepts the districts' interment fees and endowment care fees; see §9065 and §9068.

Subdivision (b) specifically waives the general prohibition against one agency charging another.

While subdivision (a) reminds districts that they can't overcharge anyone, subdivision (c) allows districts to undercharge residents and taxpayers. District residents and taxpayers already support the districts by paying property taxes and benefit assessments, so a district might want to charge them less than the full cost of the service.

Subdivision (d) allows a district to waive or cut fees; for example, fees for senior citizens or poor people. If the board of trustees adopts written policy guidelines, the general manager can charge less.

## Chapter 8. Zones

9090. (a) Whenever a board of trustees determines that it is in the public interest to provide different services, to provide different levels of services, or to raise additional revenues within specific areas of the district, it may form one or more zones pursuant to this chapter.

(b) The board of trustees shall initiate proceedings for the formation of a new zone by adopting a resolution that does all of the following:

- (1) States that the proposal is made pursuant to this chapter.
- (2) Sets forth a description of the boundaries of the territory to be included in the zone.
- (3) States the different services, the different levels of services, or the additional revenues that the district will provide.
- (4) Sets forth the methods by which those services or level of service will be financed.
- (5) States the reasons for forming the zone.
- (6) Proposes a name or number for the zone.

(c) A proposal to form a new zone may also be initiated by a petition signed by not less than 10 percent of the registered voters residing within the proposed zone. The petition shall contain all of the matters required by subdivision (b).

(d) Upon the adoption of a resolution or the receipt of a valid petition, the board of trustees shall fix the date, time, and place for the public hearing on the formation of the zone. The district shall publish notice of the hearing, including the information required by subdivision (b), pursuant to Section 6061 of the Government Code in one or more newspapers of general circulation in the district. The district shall mail the notice at least 45 days before the date of the hearing to all owners of property within the proposed zone. The district shall post the notice in at least three public places within the territory of the proposed zone.

Topic, Derivation, and Comments: Forming Zones. New, and derived from Health & Safety Code §2090 and Public Resources Code §5791.

This new chapter allows a district to set up internal zones so it can vary the district's services to fit local needs for their costs and benefits. For example, if the residents of one corner of a district want the district to take over an old pioneer burial ground and they are willing to pay for the upkeep, the district could form a zone to segregate the costs of that new service. Or, when two public cemetery districts consolidate and the voters in one of the districts had previously approved a special tax but the other one district hadn't, the consolidated district could set up a zone to segregate the payment and use of the special tax revenues.

9091. (a) At the hearing, the board of trustees shall hear and consider any protests to the formation of a zone pursuant to this chapter. The board of trustees shall terminate the proceedings, if at the conclusion of the hearing, it determines either of the following:

(1) More than 50 percent of the total number of voters residing within the proposed zone have filed and not withdrawn written objections to the formation.

(2) Property owners who own more than 50 percent of the assessed value of all taxable property within the proposed zone have filed written and not withdrawn objections to the formation.

(b) If the board of trustees determines that the written objections have been filed and not withdrawn by 50 percent or less of those voters or property owners, then the board of trustees may proceed to form the zone.

(c) If the resolution or petition for formation of a zone proposes that the zone use special taxes, special benefit assessments, fees for property-related services, or general obligation bonds to finance its purposes, the board of trustees shall proceed according to law. If the voters or property owners do not approve those funding methods, the zone shall not be formed.

Topic, Derivation, and Comments: Hearing and Protest. New, and derived from Health & Safety Code §2091 and Public Resources Code §5791.1.

Majority protest by either voters or property owners stops the formation of the zone. If there is less than a majority protest, the board of trustees proceed to ask the voters or the property owners to approve the financing methods. If they reject the taxes or the bonds, the formation of the zone stops.

In subdivision (c), the references to “special benefit assessments” and “fees for property-related services” are vestigial. While the Working Group’s drafts authorized the districts to levy special benefit assessments and charge fees for property-related services, those provisions never appeared in SB 341. Nevertheless, these terms still appear in this subdivision. Future legislation should delete them.

9092. (a) A board of trustees may change the boundaries of a zone or dissolve a zone by following the procedures in Section 9090 and 9091.

(b) Except as provided in Section 56886 of the Government Code, a local agency formation commission shall have no power or duty to review and approve or disapprove a proposal to form a zone, a proposal to change the boundaries of a zone, or a proposal to dissolve a zone.

Topic, Derivation, and Comments: Zone Boundaries. New and derived from Health & Safety Code §2092 and Public Resources Code §5791.3 and §5791.5.

A LAFCO has no control over a district's zones, just as a LAFCO does not control other special districts' internal improvement districts or service zones (see Government Code §56036 [a][5], [6], and [10]). However, in an annexation to a district or the consolidation of a district, a LAFCO can impose terms and conditions that affect zones (see Government Code §56886 [e]).



9093. (a) As determined by the board of trustees and pursuant to the requirements of this part, a zone may provide any service at any level or levels within its boundaries that the district may provide.

(b) As determined by the board of trustees and pursuant to the requirements of this part, a zone may exercise any fiscal powers within its boundaries that the district may exercise.

(c) Any special taxes, special benefit assessments, fees, or general obligation bonds which are intended solely for the support of projects, services, or programs within a zone shall be levied, assessed, and charged within the boundaries of that zone.

Topic, Derivation, and Comments: Service and Finances. New, and derived from Health & Safety Code §2093 and Public Resources Code §5791.7.

In subdivision (c), the reference to “special benefit assessments” is vestigial. While the Working Group’s drafts authorized the districts to levy special benefit assessments, that provision never appeared in SB 341. Nevertheless, this term still appears in this subdivision. Future legislation should delete it.

SECTION. 1. Section 25210.4a of the Government Code is amended to read:

25210.4a. "Miscellaneous extended services," as used in this chapter includes, but is not limited to, all of the following:

(1) Water service, including the acquisition, construction, operation, replacement, maintenance, and repair of water supply and distribution systems, including land, easements, rights-of-way, and water rights.

(2) Sewer service, including the acquisition, construction, operation, replacement, maintenance, and repair of sewage collection, transportation, and disposal systems, including land, easements, and rights-of-way.

(3) Pest or rodent control.

(4) Street and highway sweeping.

(5) Street and highway lighting, including the acquisition, construction, replacement, maintenance, and repair of a street or highway lighting system, including land, easements, and rights-of-way.

(6) Refuse collection.

(7) Garbage collection.

(8) Ambulance service.

(9) Planning for a part of the county by a planning agency established pursuant to Article 1 (commencing with Section 65100) of Chapter 3 of Title 7.

(10) Soil conservation and drainage control.

(11) Animal control.

(12) Services provided by a municipal advisory council established pursuant to Section 31010.

(13) Transportation services.

(14) Geologic hazard abatement on public or private property or structures where the board of supervisors determines that it is in the public interest to abate geologic hazards. "Geologic hazard," for purposes of this subdivision, means an actual or threatened landslide, land subsidence, soil erosion, earthquake, or any other natural or unnatural movement of land or earth.

(15) Road maintenance. Street, highway, and bridge construction, improvement and maintenance, including related drainage facilities and structures, necessary design and engineering services, and the acquisition of land, easements, and rights-of-way needed for the work. Article 3.5 (commencing with Section 20120) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code is applicable to the furnishing of extended services pursuant to this paragraph.

(16) Interments, pursuant to the Public Cemetery District Law, Part 4 (commencing with Section 9000) of Division 8 of the Health & Safety Code.

Topic, Derivation, and Comments: County Service Area Powers. A CSA is a dependent special district, always governed by the county board of supervisors. A CSA can provide any "miscellaneous extended service" that the county can provide. Government Code §25210.4a provides an open-ended list of these services. Three CSAs in San Bernardino County own and operate cemeteries. The amendment recognizes that power and inserts a cross-reference to the new Law.

SEC. 2. Section 53961 of the Government Code is amended to read:

53961. The governing board of a public cemetery district organized pursuant to the ~~public cemetery district laws in Part 4 (commencing with Section 8890)~~ Public Cemetery District Law, Part 4 (commencing with Section 9000) of Division 8 of the Health & Safety Code or the governing board of a mosquito abatement district or a vector control district organized pursuant to the Mosquito Abatement and Vector Control District Law, Chapter 1 (commencing with Section 2200) of Division 8 of the Health & Safety Code, may by resolution provide for the establishment of a revolving fund in an amount not to exceed 110 percent of one-twelfth of the district's adopted budget for that fiscal year. This fund, which shall replace the fund authorized in Section 53952, may be used to pay any authorized expenditures of the district. The resolution which established the district revolving fund shall conform with the designations required in Section 53952.

Topic, Derivation, and Comments: Revolving Funds. Current law allows cemetery districts and mosquito abatement districts to carry a higher balance in their revolving funds. The amendment corrects the cross-reference to the new Law.

SEC. 3. Section 56036 of the Government Code is amended to read:

56036. (a) "District" or "special district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries. "District" or "special district" includes a county service area, but excludes all of the following:

- (1) The state.
- (2) A county.
- (3) A city.
- (4) A school district or a community college district.
- (5) A special assessment district.
- (6) An improvement district.

(7) A community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.

(8) A permanent road division formed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code.

(9) An air pollution control district or an air quality maintenance district.

(10) A ~~service~~ zone of a fire protection district, a mosquito abatement and vector control district, a public cemetery district, or a recreation and park district.

(b) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a "district" or a "special district" for the purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a "district" or a "special district:"

- (A) A unified or union high school library district.
- (B) A bridge and highway district.
- (C) A joint highway district.
- (D) A transit or rapid transit district.
- (E) A metropolitan water district.
- (F) A separation of grade district.

(2) Any proceedings pursuant to Part 4 (commencing with Section 57000) for a change of organization involving an entity described in paragraph (1) shall be conducted pursuant to the principal act authorizing the establishment of that entity.

(c) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a "district" or "special district" for purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a "district" or "special district" if the commission of the principal county determines, in accordance with Sections 56127 and 56128, that the entity is not a "district" or "special district."

- (A) A flood control district.
- (B) A flood control and floodwater conservation district.
- (C) A flood control and water conservation district.
- (D) A conservation district.

[THE TEXT AND COMMENTARY CONTINUES ON THE NEXT PAGE.]

- (E) A water conservation district.
- (F) A water replenishment district.
- (G) The Orange County Water District.
- (H) A California water storage district.
- (I) A water agency.
- (J) A county water authority or a water authority.

(2) If the commission determines that an entity described in paragraph (1) is not a "district" or "special district," any proceedings pursuant to Part 4 (commencing with Section 57000) for a change of organization involving the entity shall be conducted pursuant to the principal act authorizing the establishment of that entity.

Topic, Derivation, and Comments: "District" in the Cortese-Knox-Hertzberg Act. The amendment adds public cemetery districts to the list of entities that are not "districts" subject to LAFCOs' control.

SEC. 3.5. Section 8136 of the Health & Safety Code is amended to read:

8136. Any city, including a chartered city, ~~which~~ that owns and operates a cemetery may maintain a proceeding in the superior court of the county in which the cemetery is located to have any plot in the cemetery declared abandoned if the present owner of the plot is unknown to the city and a period of at least 50 years has passed since any portion of the plot has been used for interment purposes. ~~Any such~~ The proceeding shall be initiated and conducted in the same manner as prescribed by ~~Article 2 (commencing with Section 9300) of Chapter 12 of Part 4 of this division~~ Section 9069, except that any reference in ~~such provisions~~ that section to a public cemetery district shall be deemed to be a reference to the city for purposes of this section.

~~Upon obtaining a final court order pursuant to this section, the city shall thereafter be the owner of the abandoned plot and may resell or otherwise reconvey it.~~

Topic, Derivation, and Comments: City's Abandoned Cemetery Plots.

Current law allows a city to have a cemetery plot declared abandoned, following the same procedures that cemetery districts use. The amendments correct the cross-reference to the new Law. The March 24 amendments added this section to SB 341.

SEC. 4. Part 4 (commencing with Section 8890) of Division 8 of the Health & Safety Code is repealed.

Topic, Derivation, and Comments: Repeal Former Law.

This language repeals the former statute that governed the public cemetery districts. The new Law replaces these repealed provisions.

SEC. 6. The Legislature hereby declares that this act is based on the recommendations of the Working Group on Revising the Public Cemetery District Law convened by the Senate Committee on Local Government.

Topic, Derivation, and Comments: Source. New and derived from Section 5 of Chapter 15 of the Statutes of 2001 (Recreation and Park District Law), and Section 11 of Chapter 395 of the Statutes of 2002 (Mosquito Abatement and Vector Control District Law).

This uncodified language signals future reviewers, including the courts, about the source of the statutory changes. This language is similar to the statements included in the Senate Local Government Committee's bills that revised the state laws governing recreation and park districts (2001) and mosquito abatement and vector control districts (2002).



## Source Table

### CALIFORNIA HEALTH & SAFETY CODE Public Cemetery District Law Division 8. Cemeteries Part 4. Public Cemetery Districts

*[All references are to the Health & Safety Code unless otherwise indicated.]*

<u>Section</u>	<u>Topic</u>	<u>Source*</u>
<b>Chapter 1. General Provisions.</b>		
9000	Name	New
9001	Legislative findings and intent	New
9002	Definitions	
	(a) "Active militia"	8961.5 (b)(2)
	(b) "Armed services"	8961.5 (b)(1)
	(c) "Board of trustees"	8892
	(d) "District"	8891
	(e) "Family member"	1569.145
	(f) "Firefighter"	8961.5 (b)(4)
	(g) "Nonresident"	8893
	(h) "Peace officer"	8961.5 (b)(3)
	(i) "Principal county"	GC §56066
	(j) "Voter"	New, 2002 (l), PRC §5780.1 (i)
9003	Succession	9100, 2003, PRC §5780.3
9004	Constitutional basis and liberal construction	New, 2004, PRC §5780.5
9005	Severability	New, 2005, PRC §5780.7
9006	Legal challenges	New, 2006, PRC §5780.9
9007	Area and boundaries	8890, 9025, 2007 (a)
<b>Chapter 2. Formation.</b>		
9010	Formation authority	8890, 2010, PRC §5782
9011	Petition signatures	8900, 8901, 2011

<b><u>Section</u></b>	<b><u>Topic</u></b>	<b><u>Source*</u></b>
9012	Notice of intention	New, 2012, PRC §5782.3
9013	Application by resolution	New, 2013, PRC §5782.5
9014	LAFCO proceedings	New, 2014, PRC §5782.7
<b>Chapter 3. Board of Trustees</b>		
9020	Board of trustees	8950, 2020, PRC §5784
9021	Initial board of trustees	8950, 2021
9022	Trustees' qualifications	8951, 2022, GC §56321.1
9023	Initial board of trustees	8952 (b), 2023, PRC §5783
9024	Trustees' terms of office (a) Four years (b) Staggered terms required (c) Vacancies	8952 (a), 2024 (a) 8952 (b) 2024 (b), §5784.3
9025	Increase or decrease trustees (a) Resolution of request (b) Notice of hearing (c) Supervisors' hearing (d) Supervisors' actions	8950, 2025 (b) 2025 (c) 8950, 2025 (c) 2025 (d)
9026	Supervisors as trustees (a) Authority (b) Resolution of intention (c) Notice of hearing (d) Supervisors' hearing and actions	New 8950.3 8950.4, 8950.5 8950.5, 8950.6, GC §57075
9027	Expanded board of trustees	8950.01, 2026
9028	Officers	New, 2027, PRC §5784.7
9029	Meetings	New, 2028, PRC §5784.11
9030	Trustees' decisions	New, 2029, PRC §5784.13
9031	Compensation and stipends	8952 (a), PRC §5784.15

<u>Section</u>	<u>Topic</u>	<u>Source*</u>
<b>Chapter 4. Powers.</b>		
9040	Cemeteries	8961
9041	Corporate powers	8963
	(a) Sue and be sued	8960, 2041 (a), PRC §5786.1 (a)
	(b) Property	8961, 8962, 2041 (b), PRC §5786.1 (b)
	(c) Sell, lease, dispose	New, 8969.5, 2041 (c)
	(d) Donate property	New, 2041 (d)
	(e) Employees	New, 2041 (h), PRC §5786.1 (d)
	(f) Counsel	2041 (i), PRC §5786.1 (e)
	(g) Contracts	New, 8963
	(h) Borrowing	New, PRC §5786.1 (g)
	(i) Seal	8960, 2041 (j), PRC §5786.1 (h)
	(j) Ordinances	New, 5786.1 (i)
	(k) Rules and regulations	8964, PRC §5786.1 (j)
	(l) Joint powers agreements	New, 2044, PRC §5786.1 (k)
	(m) Insurance	New, 2041 (k), PRC §5786.1 (l)
	(n) Trustees' training	New
	(o) Advisory committees	New
	(p) Necessary actions	8963, 2041 (m), PRC §5786.1 (m)
9042	Conformity to local ordinances and plans	New, 2042, PRC §5786.3
9043	Basic operations	8969.6, 8963
	(a) Perpetual succession	New, 2043 (a), PRC §5786.9 (a)
	(b) Name change	8969.6, 2043 (b), PRC §5786.9 (b)
	(c) Documents	New
9044	Contracts	
	(a) Policies and procedures	New, 2046 (a), PRC §5786.15 (b) GC §54202, GC §54204
	(b) Department of General Services	New, 2046 (b), PRC §5786.15 (b) GC §54205
	(c) County purchasing agent	New, 2046 (c), PRC §5786.15 (c)
	(d) County purchasing agent	New, 2046 (d), PRC §5786.15 (d)
9045	Employee relations	New, 2048, PRC §5786.19
9046	Employee bonds	New, 2049, PRC §5786.25
9047	Benefits	New, 2050, PRC §5786.27
9048	Professional meetings	New, 2051, PRC §5786.29

<b><u>Section</u></b>	<b><u>Topic</u></b>	<b><u>Source*</u></b>
9049	Interment rights	8963, 8961.13 (b)
9050	Columbariums	8961.13
9051	Mausoleums (a) Pre-1937 mausoleums (b) Visalia's mausoleum (c) Arroyo Grande's private mausoleums (d) Pre-2003 private mausoleums (e) Statutory compliance	8961.7 (a) 8961.7 (b) 9321 New New, 8961.13 (a)
9052	Monuments and markers (a) May require (b) Minimum standards (c) Indigents (d) Business prohibited	8961.8 8961.8 8962.1, 8962.2 8965, 8966
9053	Appurtenances	New
9054	Interim uses	8961.10, 8961.11
9055	Cemetery conveyance (a) Authority (b) Resolution of intention (c) Send trustees' resolution (d) Notice of hearing (e) Supervisors' hearing and actions (f) Send supervisors' resolution (g) Conveyance	8963.5 New, 8963.5 New 8963 8963.6, 8963.8, 8963.9, GC §57078 New 8963.5
9056	Dedication of property	8967, 8967.5, 8968, 8968.5, 8969

### **Chapter 5. Interments**

9060	Interment rights	8961, 8961.7, 8961.13
9061	Nonresident interments (a) General criteria (b) Family member (c) Former resident or taxpayer (d) No private cemetery (e) Military, law enforcement, firefighter	8961.1 (c) & (d) 8961.1 8961.1 (b) & (e) 8961.2, 8961.3 8961.5
9062	Indigent interments	8961.6

<b><u>Section</u></b>	<b><u>Topic</u></b>	<b><u>Source*</u></b>
9063	Oroville Cemetery District	8961.12
9064	Interment records	8110, 8963, new
9065	Endowment care fund	9000, 9003, 9005
9066	Endowment care fund investments	9002
9067	Endowment income fund investments	New
9068	Interment fees (a) Fees for services (b) Nonresident fees	8961.4 8894
9069	Abandoned interment sites	9300-9309
<b>Chapter 6. Finances</b>		
9070	Annual budget	8970, 2070, PRC §5788, PRC §5788.5
9071	Restricted reserve	New, 2071, PRC §5788.9
9072	Annual appropriations limit	New, 2072, PRC §5788.11
9073	Property tax allocation	8970, 8971, 8972, 8973, 8980, 8981, 8982, 8983, 2073, PRC §5788.13
9074	Contributions and borrowing	New, 2074, PRC §5788.17
9075	Claims	9010, 2075, PRC §5788.23
9076	Paying claims and warrants	New, 2076, PRC §5788.23
9077	District treasurer	New, 2077, PRC §5784.9
9078	Revolving fund	New, 2078
<b><u>Section</u></b>	<b><u>Topic</u></b>	<b><u>Source*</u></b>
9079	Audits and reports	8990, 8991, 2079, PRC §5788.25

**Chapter 7. Alternative Revenues**

9080	Revenue authority	New, 2080, PRC §5789
9081	Special taxes	
	(a) Special taxes	8981.5
	(b) Mello-Roos Act special taxes	New, 2081, PRC §5789.1
9082	General obligation bonds	New, PRC §5790
9083	Fees	New, 2085, PRC §5789.5

**Chapter 8. Zones**

9090	Forming zones	New, 2090, PRC §5791
9091	Hearing and protest	New, 2091, PRC §5791.1
9092	Zone boundaries	New, 2092, PRC §5791.1, PRC §5791.5
9093	Services and finances	New, 2093, §5791.7

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**Other Statutory Changes**

GC §25210.4a County Service Area Powers

GC §53961 Revolving Funds

GC §56036 “District” in the Cortese-Knox-Hertzberg Act

8136 City’s Abandoned Cemetery Plots

§8890 et seq. Repeal Former Law

Uncodified Source Section 5, Chapter 15, Statutes of 2001  
Section 11, Chapter 395, Statutes of 2002

**\* Sources**

- GC = Government Code
- PCC = Public Contract Code
- PRC = Public Resources Code

**Disposition Table**

**CALIFORNIA HEALTH & SAFETY CODE**

**Division 8. Cemeteries**

**Part 4. Public Cemetery Districts**

**Chapter 1. General Provisions**

*[All references are to the Health & Safety Code unless otherwise indicated.]*

<b>Former Law</b>		<b>New Law</b>
<b><u>Section</u></b>	<b><u>Topic</u></b>	<b><u>Disposition</u></b>
8890	Territory.	9007, 9010
8891	“District.”	9002 (d)
8892	“Trustees.”	9002 (c)
8893	“Nonresident.”	9002 (g)
8894	“Nonresident fee.”	9068 (b)

**Chapter 2. Petitions**

8900	Petition signatures.	9011-9014
8901	Petition contents.	9011-9014
8902	Petition procedures.	9011-9014
8903	Petition format.	9011-9014

**Chapter 3. Notice of Hearing**

8910	County supervisors’ hearing.	9011-9014
8911	Hearing notice.	9011-9014
8912.	Hearing notice.	9011-9014

**Chapter 4. Hearing**

8920	County supervisors’ hearing.	9011-9014
8921	Adjourned hearing.	9011-9014
8922	Defective petitions.	9011-9014
8923	County supervisors’ findings.	9011-9014
8924	County supervisors’ final hearing.	9011-9014

**Former Law**

**New Law**

<u>Section</u>	<u>Topic</u>	<u>Disposition</u>
8925	Boundary changes.	9011-9014
8926	Opponents.	9011-9014

### Chapter 5. Protest and Election

8930	Boundary protests.	9011-9014
8931	Special election.	9011-9014
8932	Election order.	9011-9014
8933	Election officials.	9011-9014
8934	Election law.	9011-9014
8934.1	LAFCO's ballot analysis.	9011-9014
8934.2	Ballot arguments.	9011-9014
8934.3	Multiple arguments.	9011-9014
8934.4	Ballot pamphlet.	9011-9014
8935	Ballots.	9011-9014
8936	Ballot format.	9011-9014
8937	Election returns.	9011-9014
8938	2/3-voter approval.	9011-9014
8939	Failed election.	9011-9014
8940	Formation declared.	9011-9014
8941	Recordation.	9011-9014

### Chapter 6. Government

8950	Board of trustees.	9020
8950.01	Trustees after consolidation.	9027
8950.3	Supervisors as trustees.	9026
8950.4	Hearing notice.	9026
8950.5	Supervisors' hearing and notice.	9026
8950.6	Protest.	9026
8951	Trustees' qualifications.	9022
8952	Terms and compensation.	9023, 9024, 9031
<b>Former Law</b>		<b>New Law</b>



<u>Section</u>	<u>Topic</u>	<u>Disposition</u>
<b>Chapter 7. Powers</b>		
8960	Seal, suits.	9041
8961	Cemeteries, property, burials.	9040
8961.1	Nonresident burials, conditions.	9061
8961.2	Nonresident burials, distance and indigents.	9061
8961.3	Nonresident burials, more conditions.	9061
8961.4	Nonresident burials, endowments.	9065, 9068
8961.5	Nonresident burials, line-of-duty.	9061
8961.6	Nonresident burials, indigents.	9062
8961.7	Mausoleums, exceptions.	9051
8961.8	Required markers.	9052
8961.9	Veterans' association plots.	repealed
8961.10	Agricultural uses.	9054
8961.11	Recreational uses.	9054
8961.12	Nonresident burials, Oroville.	9063
8961.13	Columbaria.	9050
8962	Public streets and places.	9041
8962.1	Markers for indigents.	9052
8962.2	Donations for markers.	9052
8963	Burials and records.	9041, 9064
8963.5	Cemetery conveyance.	9055
8963.6	Supervisors' intent resolution.	9055
8963.7	Hearing notice.	9055
8963.8	Supervisors' decision.	9055
8963.9	Majority voter protest.	9055
8964	Rules and regulations.	9041
8965	Private marker sales banned.	9052
8966	District marker sales banned.	9052
8967	Dedications.	9056
8967.5	Trustees' dedication vote.	9056

<b>Former Law</b>		<b>New Law</b>
<b><u>Section</u></b>	<b><u>Topic</u></b>	<b><u>Disposition</u></b>
8968	Hearing notice.	9056
8968.5	Trustees' hearing and decision.	9056
8069	Protests.	9056
8969.5	Quitclaim deeds.	9041
8069.6	Name change.	9043

## **Chapter 8. Finance**

### **Article 1. Estimate of Expenses**

8970	Annual budget.	9070
8971	Dividing the budget.	repealed
8072	Assessed valuation.	repealed
8973	Certified estimates.	repealed

### **Article 2. Taxation**

8980	Tax rate.	9073
8981	Maximum tax rate.	9073
8981.5	Special taxes.	9081
8982	Tax collection, spending, warrants, treasurer.	9073, 9076
8983	Treasurer for multi-county districts.	9076
8984	County treasurer.	9076, 9077
898	Funds.	9074

### **Article 3. Trustees Report**

8990	Annual financial report.	9079
8991	Alternative financial report.	9079

### **Article 4. Perpetual [Endowment] Care Fund**

9000	Endowment care fund.	9065
9001	Property taxes and endowment funds.	Repealed

<b>Former Law Section</b>	<b>Topic</b>	<b>New Law Disposition</b>
9002	Permitted investments.	9066, 9067
9003	Principal and interest.	9065
9004	Annual report.	9079
9005	Deposits and spending.	9065
<b>Article 5. Claims</b>		
9010	Claims.	9075
<b>Chapter 9. Annexation of Territory</b>		
<b>Article 1. Petition</b>		
9025	Annexations.	9007
<b>Article 2. Notice and Hearing [REPEALED]</b>		
<b>Chapter 10. Withdrawal of Territory [REPEALED]</b>		
<b>Chapter 11. Effect on Previous Laws</b>		
9100	Savings clause.	9003
<b>Chapter 12. Abandonment</b>		
<b>Article 1. Abandonment of Cemeteries</b>		
9201	Acquire nonperpetual care cemeteries.	repealed
9203	Removal of remains.	repealed
9204	Resolution contents.	repealed
9205	Published notice.	repealed
9206	Posting and mailing notice.	repealed
9207	Power to reinter.	repealed
9208	Request to be present.	repealed
9209	Notice to requesters.	repealed
9210	Voluntary removal.	repealed

<b>Former Law</b>		<b>New Law</b>
<b><u>Section</u></b>	<b><u>Topic</u></b>	<b><u>Disposition</u></b>
9211	Heirs' consent.	repealed
9212	Owners' exception.	repealed
9213	Removal by heirs.	repealed
9214	District reinterment.	repealed
9215	Reinterment.	repealed
9216	Grave appurtenances.	repealed
9217	Abandoned appurtenances.	repealed
9218	Sale.	repealed
9219	Districts' costs.	repealed
9220	Proceeds.	repealed
9221	Reinterment plots.	repealed
9222	Transfer plots.	repealed
9233	Markers and records.	repealed
9224	Recordation.	repealed
9225	No permits needed.	repealed

### **Article 2. Abandoned Cemetery Plots**

9300	"Plot."	repealed
9301	Lawsuits to declare abandoned plots.	9069
9302	Petition contents.	9069
9303	Affidavit and hearing.	9069
9304	Notice.	9069
9305	Court hearing.	9069
9306	Mandatory dismissal.	9069
9307	Court order and rehearing.	9069
9308	Notice of order.	9069
9309	Abandonment.	9069

### **Chapter 13. Mausoleums**

9320	"Mausoleum."	repealed
9321	Arroyo Grande's mausoleum.	9051

**Table 1: Cemetery District Bills, 1909-2003**

<b><u>Bill/Author</u></b>	<b><u>Chapter/Year</u></b>	<b><u>Comments</u></b>
SB 524 (Roseberry)	Chap. 106, 1909	The original act. Repealed by c933/41
SB 409 (Curtin)	Chap. 352, 1911	Trustees' appointments
SB 155 (Purkitt)	Chap. 652, 1921	First revision; 12 sections
	Chap. 301, 1925	Recodification?
	Chap. 814, 1927	Recodification?
	Chap. 325, 1929	Perpetual care, boundary changes.
	Chap. 359, 1929	Property tax rates
	Chap. 228, 1931	Amended §8941, formation filing
	Chap. 877, 1937	Amended §8931+, elections, formations
SB 657 (Mixter/Foley)	Chap. 60, 1939	Recodified into the Health & Safety Code.
	Chap. 715, 1941	Added §9201+, abandonment of cemeteries
	Chap. 933, 1941	Amended §8931, special elections
	Chap. 579, 1943	Added §8963
	Chap. 760, 1943	Amended §9203, removing remains
	Chap. 936, 1945	Amended §9201, cemetery abandonment
	Chap. 503, 1947	Added §8965, can't sell monuments
	Chap. 870, 1947	Added §8961.3 (§8961.7), mausoleum
	Chap. 868, 1949	Added §8961.7, mausoleum before 1947
	Chap. 176, 1951	Amended §9005, fund revenues
	Chap. 402, 1955	Added §8967+, street easements
	Chap 357, 1957	Amended §8968, hearing notice
	Chap. 473, 1957	Added §8961.1, nonresident burials
	Chap. 1222, 1957	Amended §8961, maintenance, nonresidents
	Chap. 876, 1959	Amended §8950, appointed trustees
	Chap. 997, 1959	Added §8961.3, interment conditions
	Chap. 1139, 1959	Amended §8961.2, nonresidents, indigents
	Chap. 1140, 1959	Amended §8961, cemetery maintenance
	Chap. 1141, 1959	Amended §8961.4, burial charges
	Chap. 1424, 1959	Added §8991, verified annual audit
	Chap. 1605, 1959	Added §8961.5, no endowment charges
	Chap. 1727, 1959	Added §9010, claims
	Chap. 281, 1961	Amended §8952, trustees' terms
	Chap. 284, 1961	Added §9300, abandonment of plots
	Chap. 819, 1961	Added §8963.5, conveying cemeteries
	Chap. 1360, 1961	Added §8969.5, quitclaim deeds
	Chap. 1726, 1961	Added §8950.5, terminating trustees
	Chap. 1157, 1963	Added §8961.6, nonresident indigents
	Chap. 1715, 1963	Amended §9010, claims
	Chap. 1615, 1965	Added §8961.8, monuments and markers
	Chap. 2043, 1965	Amended §9025, boundaries, LAFCOs
	Chap. 664, 1967	Added §8950.3+, B/S trustees, conveying
	Chap. 1084, 1967	Added §8961.9, veterans' burial lots
	Chap. 1086, 1968	Amended §8950, appointed trustees
<b><u>Bill/Author</u></b>	<b><u>Chapter/Year</u></b>	<b><u>Comments</u></b>

Chap. 17, 1970	Amended §8970, annual budget estimate
Chap. 736, 1970	Added §8934.1+, LAFCO role in formation
Chap. 354, 1973	Added 8969.6, district name change
Chap. 300, 1974	Added 9320+, Arroyo Grande mausoleum
Chap. 950, 1974	Amended §8893+ resident/nonresident
Chap. 582, 1975	Amended §8961, property acquisition
Chap. 127, 1977	Added §8961.11, lease future cemetery land
Chap. 245, 1976	Amended §8963, cemetery maps
Chap. 143, 1978	Amended §8961.4, burial charges
Chap. 950, 1978	Amended §8894, nonresident burials, fees
Chap. 7, 1980	Amended §8961.10, future cemetery lands
Chap. 454, 1982	Amended §8934.4, ballot pamphlet
Chap. 1039, 1982	Added §8961.12, Oroville District
Chap. 307, 1984	Added §8961.5, nonresident burials
Chap. 820, 1984	Amended §8952, trustees' terms
Chap. 315, 1985	Amended §8894+, fees, reports
Chap. 617, 1985	Amended §8990, territory
Chap. 982, 1986	Amended §8952, trustees' terms
Chap. 70, 1991	Added §8981.5, special taxes
SB 1546 (Elec Comte) Chap. 923, 1994	Amended §8934.4, ballot pamphlet
SB 1691 (Craven) Chap. 314, 1996	Added §8950.01, consolidated districts
SB 1497 (Health Comte) Chap, 1023, 1996	Amended §8961.5, nonresident burials
SB 1498 (Karnette) Chap. 236, 1998	Added §8961.13, columbaria
SB 954 (Karnette) Chap. 207, 1999	Amended §8961.13, columbaria
SB 2096 (Poochigian) Chap. 68, 2000	Amended §8961.7, Visalia's mausoleum
SB 341 (Local Govt) Chap. 57, 2003	Revised the Public Cemetery District Law

**Table 2: Legal Opinions Affecting Cemetery Districts**

<b><u>Attorney General's Opinions</u></b>		
<b><u>Citation/Year</u></b>	<b><u>Former Section</u></b>	<b><u>Comments</u></b>
7 Ops.Cal.Atty.Gen. 398 (1946)	§8890	Formation costs.
11 Ops.Cal.Atty.Gen. 242 (1948)	§8963, 9100	No bid contracts.
14 Ops.Cal.Atty.Gen. 99 (1949)	§8964, 8983, 8984, 9000, 9005	Perpetual care funds..
14 Ops.Cal.Atty.Gen. 252 (1949)	§8890, 8962, 8963	Property acquisition.
32 Ops.Cal.Atty.Gen. 184 (1958)	§8961.2, 8961.4, 9000	Endowment care.
34 Ops.Cal.Atty.Gen 267 (1959)	§8961.2, 8961.4	Special funds.
42 Ops.Cal.Atty.Gen. 83 (1963)	§8961	Can't lease land.
42 Ops.Cal.Atty.Gen. 125 (1963)	§8970, 8980	Borrowing money.
64 Ops.Cal.Atty.Gen. 905 (1981)	§8961.2, 8961.3	Interment conditions.
78 Ops.Cal.Atty.Gen. 189 (1995)	§8961.4, 9000	Use of endowment.

**Legislative Counsel's Opinions**

<b><u>Citation/Year</u></b>	<b><u>Comments</u></b>
Opinion No. 10107 (1974)	Districts can sell vaults, liners, and vases.
Opinion No. 12648 (1976)	Nonresident fees.
Opinion No. 2205 (1989)	Endowment fees

**Source:** Senate Local Government Committee memo, "Draft #2 and Past Legal Opinions," to David McMurchie and Robert Hunt from Peter Detwiler, December 23, 2002.

**Table 3: Participation in the Working Group Meetings**

<b><u>Participant</u></b>	<b><u>October 15</u></b>	<b><u>October 25</u></b>	<b><u>December 13</u></b>
<b><u>Trustees</u></b>			
Conway	Yes	Yes	Yes
Facchini	Yes	Yes	Yes
McLaughlin	Yes	Yes	Yes
<b><u>Managers</u></b>			
Herrera	Yes	Yes	No
Pelfrey	Yes	Yes	Yes
Randall	No	Yes	Yes
<b><u>Experts</u></b>			
Foster	Yes	Yes	No
Lewis	Yes	Yes	Yes
McMurchie	Yes	Yes	Yes
Piepho	No	Yes	Yes
<b><u>Associations</u></b>			
Ausmus	Yes	Yes	Yes
Brinton	Yes	No	No
Brundage	No	Yes	Yes
Burks	Yes	Yes	No
Cordry	Yes	Yes	Yes
Coupal	Yes	No	No
Heim	Yes	No	Yes
Llewellyn	No	Yes	Yes
McCarthy	No	No	No
Mikels	No	Yes	No
Stewart	No	Yes	Yes
<b>TOTALS:</b>	14	17	14



**Table 4: Cemetery Districts With Revenues Over \$500,000**

The Public Cemetery District Law allows districts with annual revenues greater than \$500,000 to withdraw their funds from the county treasurer and manage their own fiscal affairs (Health & Safety Code §9077). At least 28 of the 253 public cemetery districts qualify:

<b><u>District</u></b>	<b><u>County</u></b>	<b><u>Revenues</u></b>
Oroville	Butte	\$590,413
Clovis	Fresno	1,137,335
Central Valley	Imperial	598,362
Hanford	Kings	613,633
Lemoore	Kings	706,801
Madera	Madera	1,592,372
Merced	Merced	511,693
Orange	Orange	3,507,822
Auburn	Placer	567,368
Newcastle-Rocklin-Gold Hill	Placer	772,555
Roseville	Placer	1,094,082
Coachella Valley	Riverside	760,983
Palm Springs	Riverside	895,434
San Jacinto Valley	Riverside	694,742
Summit	Riverside	644,795
North County	San Diego	2,011,087
Pomerado	San Diego	543,368
Tracy	San Joaquin	532,414
Goleta	Santa Barbara	646,434
Santa Maria	Santa Barbara	876,593
Saratoga	Santa Clara	728,371
Pajaro	Santa Cruz	548,895
Vacaville-Elmira	Solano	666,986
Sutter	Sutter	638,338
Alta	Tulare	520,058
Porterville	Tulare	626,364
Tulare	Tulare	523,272
Visalia	Tulare	925,714

**Source:** Table 13, General Purpose Transactions, *Special Districts Annual Report, Fiscal Year 1999-00*, Sacramento: State Controller's Office, April 2003.

## Sources & Credits

In researching and writing this report, the staff of the Senate Local Government Committee relied on the materials prepared for the Working Group, plus the following sources:

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Peter M. Detwiler, "An Approach to Analysis," (memo), Sacramento: Senate Housing and Land Use Committee, November 30, 1995.

Peter M. Detwiler, "For Years To Come," (presentation notes), California Association of Public Cemeteries Annual Conference, November 7, 2003.

Peter M. Detwiler, Science, Service, and Statutes: A Legislative History of Senate Bill 1588 and the "Mosquito Abatement and Vector Control District Law", Sacramento: Senate Local Government Committee, September 2003.

Stephen Hummelt, Cheryl Brown, and Bernadette McNulty, eds., California Blue Book, Sesquicentennial Edition 2000, Sacramento: Office of the Secretary of the Senate, 2000.

John F. Llewellyn, A Cemetery Should Be Forever: The challenge to managers and directors, Glendale, California: Tropico Press, 1998.

Gilbert Martin, Evergreen Cemetery: Remembering Lompoc's Past, 1986.



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