

#36.35

11/16/71

Memorandum 71-94

Subject: Study 36.35 - Condemnation (Immediate Possession--Condemnation Deposits Fund)

Summary

The Commission has previously approved the addition of provisions to the Government Code to continue the Condemnation Deposits Fund for handling and investment of money deposited by plaintiffs in order to obtain possession of property.

The 1971 Legislature has enacted a measure establishing the Litigation Deposits Fund which largely duplicates the functions of the Condemnation Deposits Fund. (The new fund is compiled in the Government Code using the same section numbers as the Commission planned to use to continue the Condemnation Deposits Fund.) The overlap between these two funds is not complete, however, and the staff recommends that the Condemnation Deposits Fund be retained as a separate fund in the state treasury.

Analysis

Condemnation Deposits Fund. Code of Civil Procedure Section 1254 makes provision for the Condemnation Deposits Fund in the state treasury intended to receive and invest money paid into court by a plaintiff in order to obtain possession of property. This fund consists of money paid into court by any plaintiff, and its flow is regulated by the Pooled Money Investment Board. Accumulated interest on money in the fund is paid out to such persons and at such times as the court directs. The Commission has tentatively determined to recodify the Condemnation Deposits Fund as Article 9 (commencing with Section 16425) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code. (See Comprehensive Statute.)

Litigation Deposits Fund. The 1971 Legislature enacted as Article 9 (commencing with Section 16425) the Litigation Deposits Fund. (See Exhibit I, attached.) This fund consists of money received as litigation deposits where the State of California is a party to the litigation and where there is no special provision for investing and handling the money. Its flow is regulated by the Department of Justice. Accumulated interest on money in the fund is paid out to the party receiving the deposit when ordered by the court.

Comparison of the funds. Apart from the obvious differences that the condemnation fund applies only to condemnation and is controlled by the Pooled Money Investment Board, while the litigation fund applies to all types of litigation and is controlled by the Department of Justice, there are other differences of significance to eminent domain cases.

(1) The litigation fund is for receipt of "litigation deposits" only. Whether an immediate possession deposit would qualify as a "litigation" deposit is not clear from the statute.

(2) The litigation fund is for deposits involving state litigation only. This would preclude handling of deposits made by local public entities and by public utilities.

(3) The litigation fund interest is to be paid to the person receiving the deposit. In eminent domain proceedings, interest may not accrue on a deposit for possession following entry of judgment so that the person receiving the deposit may not be entitled to the accumulated interest.

#### Recommendation

The staff believes that the differences between the Litigation Deposits Fund and the Condemnation Deposits Fund are sufficiently irreconcilable to

preclude an effort to merge the condemnation deposits with the litigation deposits. Instead, the staff recommends that the Condemnation Deposits Fund be retained as previously approved as a separate Article 10 (commencing with Section 16429.1) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

Respectfully submitted,

Nathaniel Sterling  
Legal Counsel

EXHIBIT I

AMENDED IN ASSEMBLY JULY 28, 1971

AMENDED IN SENATE MAY 6, 1971

AMENDED IN SENATE APRIL 23, 1971

SENATE BILL

No. 371

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CHAPTER 1148

Introduced by Senator Cologne

February 24, 1971

REFERRED TO COMMITTEE ON GOVERNMENTAL ORGANIZATION

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*An act to add Article 9 (commencing with Section 16425) to Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code, relating to litigation deposits, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 371, as amended, Cologne (G.O.). Litigation Deposits Fund.  
Adds Art. 9 (commencing with Sec. 16425), Ch. 2, Pt. 2, Div. 4, Title 2, Gov.C.

Establishes the Litigation Deposits Fund in the State Treasury for the deposit of money received or held as litigation deposits where the State of California is a party to the litigation. Appropriates money in fund.

Specifies the duties of the Department of Justice, Department of General Services, the State Treasurer, and the State Controller with respect to such fund.

Provides for the investment or deposit of the fund and for the allocation of income. Provides amounts allocated to deposit shall be paid to person receiving deposit when ordered by the court.

Vote—Majority; Appropriation—Yes; Fiscal Committee—Yes.

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

1 SECTION 1. Article 9 (commencing with Section 16425) is  
2 added to Chapter 2 of Part 2 of Division 4 of Title 2 of the  
3 Government Code, to read:

4  
5 Article 9. Litigation Deposits Fund

6  
7 16425. There is in the State Treasury the Litigation De-  
8 posits Fund, hereafter referred to as "the fund," which is  
9 hereby appropriated for the purposes of this article.

1 16426. The fund consists of all money received or held as  
2 litigation deposits where the State of California is a party to  
3 the litigation and no other state statutes specifically provide  
4 for both of the following:

5 (1) Handling and investing such money.

6 (2) Crediting any interest accrued thereto to such deposits.

7 16427. The fund is under the control of the Department  
8 of Justice, hereafter referred to as "the department." The  
9 department shall maintain accounting records pertaining to  
10 the fund, including subsidiary records of individual litigation  
11 deposits and the disbursements thereof. The department shall  
12 file a claim with the State Controller to pay out money in the  
13 fund to whomever and at such time as the court may direct.  
14 Any residue remaining in a deposit account after satisfaction  
15 of all court-directed claims for that account shall be trans-  
16 ferred to the General Fund.

17 16428. Money in the fund may be invested and reinvested  
18 in any securities described in Section 16430 or deposited in  
19 banks as provided in Chapter 4 (commencing with Section  
20 16500) of this part. The department shall determine the  
21 amount of money available for investment or deposit and shall  
22 so arrange the investment or deposit program that funds will  
23 be available for the immediate payment of any court order or  
24 decree. The Treasurer shall invest or make deposits in accord-  
25 ance with these determinations.

26 All revenues earned from investment or deposit of fund  
27 moneys shall be deposited in the fund. After first deducting  
28 therefrom the amount payable to the Treasurer for investment  
29 services rendered and the amount payable to the department  
30 for administrative services rendered, the department shall ap-  
31 portion as of June 30 and December 31 of each year the re-  
32 mainder of such revenues earned and deposited in the fund  
33 during the six calendar months ending with such dates. There  
34 shall be apportioned and credited to each litigation deposit in  
35 the fund during such six-month period, an amount directly  
36 proportionate to the total deposits in the fund and the length  
37 of time such deposits remained therein. The amounts so ap-  
38 portioned shall be paid to the party receiving the deposit when  
39 ordered by the court. The cost of administrative services ren-  
40 dered shall be determined by the department in a manner ap-  
41 proved by the Department of General Services. The amounts  
42 payable to the department and to the Treasurer shall be trans-  
43 ferred to the General Fund and accounted as reimbursements  
44 to their respective appropriations