

Memorandum 74-33

Subject: Study 77 - Nonprofit Corporations

Materials to Bring to Meeting

Please bring to the meeting all of the materials listed under item 5 on the agenda for the June meeting. These include the Draft of Statute (in the Green Binder) which was distributed and considered at the last meeting; we do not plan to send you another copy of the Draft of Statute. You should also bring to the June meeting Memorandum 74-31 which was sent to you prior to the last meeting and considered at that meeting.

Meeting Procedure

At the last meeting, the Commission covered the first 100 pages of the staff draft of the new nonprofit corporation code. It was decided at the meeting that at the June 27-29 meeting the Commission will not reconsider the first 100 pages until the remainder of the staff draft has been covered. This is primarily because Mr. McQuinn will be leaving after the June meeting and will not be available at future meetings. Accordingly, we will start with Article 3 on page 100 at the June meeting with the goal of covering the remainder of the staff draft (including the first two matters discussed below) and, after that task is accomplished, we will consider the other matters discussed below and any matters in connection with the first 100 pages of the staff draft. There are a few inadvertent omissions that were made in preparing or typing the staff draft; we will correct these when we prepare a revised draft for a future meeting.

Common Law Equitable Power of Courts to Enjoin Fraudulent Amendments to the Articles

The courts in California have recognized an ill-defined equitable power to enjoin grossly unfair or fraudulent amendments to the articles.

See DeMello v. Dairyman's Co-op. Creamery, 73 Cal. App.2d 746, 167 P.2d 226 (1946)(an amendment to the articles reorganizing a cooperative business association into a nonprofit marketing association was not unfair to minority shareholders so as to entitle them to relief); and Ballantine, California Corporation Laws § 306,(1949).

To date, most of the litigation on this issue has involved amendments to the articles which change the financial structure of the corporation such as those which remove arrearages on preferred stock. Nevertheless, the recognized equitable power of courts to enjoin fraudulent amendments could be applied to other forms of amendment. There is no language expressly limiting its application to certain amendments. Therefore, Section 561 of the staff draft essentially codifies the common law except, unlike the common law, it specifies the precise persons who may bring such an action.

Incorporation and Dissolution of "Subordinate Body"

The initial staff draft omitted provisions relating to the incorporation and dissolution of a "subordinate body." The substance of the existing provisions in the General Nonprofit Corporation Law would be continued in the new code by Sections 165, 302(b), and 1609.5, which are set out in attached Exhibit I. These provisions should be considered when the portion of the statute in which they will be compiled is considered.

Abolition of Concept of Incorporators

Under the corporation laws of several states, incorporators serve two important functions: (1) manage and organize the new corporation until the election of directors and (2) call a meeting of the shareholders (or members) for the purpose of electing directors. See Del. Corp. Code § 107.

However, under California law, the first directors (who are named in the articles) have complete authority to manage the corporate affairs and they function in the same manner as elected directors. Middleton v. Arastraville Min. Co., 146 Cal. 219, 79 P. 889 (1905). See Ballantine & Sterling, California Corporation Laws § 67 (1973). In California, incorporators who are not directors serve mainly the formality of signing the articles; although, before shares are issued or members admitted, incorporators may amend the articles. Corp. Code § 3630. The staff could discover no persuasive reason for retaining the anachronistic concept of incorporators and we believe that the decision of the Commission made at the last meeting to eliminate "incorporators" is a sound one.

Deletion of the Prohibition Against Amending the Articles to Alter the Names and Addresses of First Directors

Corporations Code Section 3603 prohibits amending the articles to alter the names and addresses of first directors. The staff could not discover an explanation for this provision. Since first directors are equivalent in powers and duties to elected directors (see the discussion above), the decision made at the last meeting to delete this prohibition from the staff draft is justified. See Minutes of May Meeting page 17.

Elimination of Requirement That Articles Be Filed With County Clerk

At the May meeting, the Commission decided to delete the requirement that a copy of the articles (and amendments to the articles) be filed with the county clerk. The staff was to check to see whether this requirement served any useful purpose.

We have checked with Harold Marsh, who is the consultant on the revision of the General Corporations Law. He advises they have decided to delete the requirement of filing with the county clerk in the county where the principal office is located; however, because they do not want any problems with the title companies, they are continuing the requirement that the articles be filed in each county where the corporation acquires real property. See Staff Draft § 505 for filing provision.

Statement Concerning Principal Office in Articles

The question arose at the Commission's May meeting as to whether or not there is a continued need for the requirement that a nonprofit corporation specify in its articles "the county in this state where the principal office for the transaction of the affairs of the corporation is located." See Section 501(d) of the staff draft. Cf. Corp. Code §§ 9300(d) and 301(c) ("Articles of incorporation shall set forth: * * * (c) The county in this state where the principal office for the transaction of business of the corporation is located.").

The staff has checked with Harold Marsh and he advises this provision will not be included in the articles under the new General Corporation Law since the same information must be filed with the Secretary of State and kept up to date under the provisions to be compiled in our staff draft as Sections 975-986.

It should be noted that the Corporations Code requires the corporation to designate in its articles "the principal office for the transaction of business," and Section 395.5 provides that venue is proper in the county where "the principal place of business" is located. Nevertheless, for the purposes of venue, this language has been held to be essentially equivalent. Hardin v. San Jose City Lines, 103 Cal. App.2d 688, 230 P.2d 31 (1951)(corporation cannot defeat jurisdiction by showing that it has no place of business in the county or district designated in its articles).

However, for the purpose of greater clarity and also to recognize the new terminology of the Nonprofit Corporations Code, the staff recommends that Code of Civil Procedure Section 395.5 be amended. The staff also recommends that the venue rules relating to unincorporated associations be collected in Code of Civil Procedure Section 395.2. The text of the proposed amendments is set out **in Exhibit III** attached.

Changing "General Nonprofit Corporation Law" to "Nonprofit Corporation Law--
General Provisions"

At the last meeting, the Commission decided to change the short title "General Nonprofit Corporation Law" (used in existing statutes) to "Nonprofit Corporation Law--General Provisions." The staff believes that this is an undesirable change and recommends that the present designation "General Nonprofit Corporation Law" be retained.

Under the existing Corporations Code, there are two basic statutes. The statute relating to business corporations is given the short title "General Corporation Law." Corp. Code § 100 ("This division shall be known and may be cited as the General Corporation Law."). No doubt this short title will be retained by the committee that is revising the General Corporation Law. The other basic statute, which applies to nonprofit corporations, is given the short title "General Nonprofit Corporation Law." Corp. Code § 9000 ("This part shall be known and may be cited as the General Nonprofit Corporation Law."). This is the name the Commission has decided to change to "Nonprofit Corporation Law--General Provisions."

Not only is the title "General Nonprofit Corporation Law" consistent with the title given to the business corporation law, but also we believe that the title is a better description of the division than the short title tentatively decided upon by the Commission. We believe that the title tentatively

selected by the Commission will be confusing. Moreover, as an examination of the various conforming amendments we will need to make discloses, the short title "General Nonprofit Corporation Law" is used in a number of other statutes compiled in various codes.

The reorganization for the new Nonprofit Corporations Code (to conform to decisions made at the last meeting) would be generally as outlined below:

NONPROFIT CORPORATIONS CODE

DIVISION 1. GENERAL PROVISIONS

- Chapter 1. Preliminary Provisions and Construction
- Chapter 2. Definitions
- Chapter 3. Operative Date; Transitional Provisions

DIVISION 2. NONPROFIT CORPORATION LAW--GENERAL PROVISIONS

- Chapter 1. General Provisions
- Chapter 2. Formation and Bylaws
- Chapter 3. Members
- Chapter 4. Management
- Chapter 5. Corporate Records and Reports
- Chapter 6. Corporate Finance
- Chapter 7. Organic Changes
- Chapter 8. Dissolution
- Chapter 9. Foreign Corporations
- Chapter 10. Service of Process
- Chapter 11. Supervision by Attorney General

DIVISION 3. NONPROFIT CORPORATIONS FOR SPECIFIC PURPOSES

- Chapter 1. Corporations Sole
- Chapter 2. Corporations for Prevention of Cruelty

Chapter 3. Corporations Defraying Costs of Professional Services

Chapter 4. Port and Terminal Protection and Development Corporations

Reference to the above outline demonstrates, we believe, that giving Division 2 the name "General Nonprofit Corporation Law" would be a significant improvement. Incidentally, we took the title for Division 3 from Division 3 of the existing code; the existing code title is "Corporations for Specific Purposes."

Form and Scope of New Statute

New code. The Executive Secretary has again discussed with the Legislative Counsel whether the new statute should be a separate code. The Legislative Counsel is strongly against new codes; he has successfully resisted many attempts to create new codes. He advises that he is planning to renumber the entire Code of Civil Procedure and is strongly against the Eminent Domain Law being a new code. However, he is undecided whether the new nonprofit corporations statute should be a new code. He said he would sound out certain members of the Legislature on this matter and advise us soon. He sees more justification for a new code for nonprofit corporations, but he is unwilling at this time to give his approval of a new code unless it appears that a new code on this subject would meet the approval of the legislators with whom he plans to discuss this matter.

Scope. Attached as Exhibit V is an outline of the existing Corporations Code. Our new statute would replace only Division 2 (relating to nonprofit corporations). We would not affect Division 3 of the Corporations Code even though some of the corporations included in that division may be formed either as business corporations or as nonprofit corporations. Although California Job Creation Corporations (included in Division 3) are nonprofit corporations,

the provisions relating to them are included in a part designated as California Job Creation Program (see Corp. Code § 1400 et seq.), and we do not believe that it would be desirable to transfer the great mass of statutory material in this part into our new statute. Furthermore, it would not be feasible to split out the provisions relating to the nonprofit job creation corporation from the other material in the part. Likewise, we do not believe it would be desirable to include the nonprofit ~~ass~~ociations material in Title 3 (relating to unincorporated associations) of the Corporations Code in our new statute.

Respectfully submitted,

Rand McQuinn
Legal Counsel

EXHIBIT I

405-849

§ 165. "Subordinate body"

165. "Subordinate body" means a subordinate body instituted or created under the authority of any head or national association, lodge, order, beneficial association, fraternal or beneficial society, labor union, foundation, federation, or any other society, organization, or association.

Comment. Section 165 defines "subordinate body" as it was defined in former Section 9203 of the Corporations Code. Subordinate bodies may incorporate under this division. See Section 302. Special rules apply to the dissolution of a subordinate body when its head or national body revokes its charter. See Section 1609.5.

405-850

§ 302. Incorporation of unincorporated association or subordinate body

302. (a) An unincorporated association or organization may be incorporated under this division.

(b) A subordinate body may be incorporated under this division.

The fact that the head or national body is unincorporated does not prevent incorporation of the subordinate body. The rules governing the incorporation of unincorporated associations govern the incorporation of any subordinate body. The seal of the subordinate body is its corporate seal.

Comment. Subdivision (a) of Section 302 continues the provisions of former Section 9202 of the Corporations Code (General Nonprofit Corporation Law) except that Section 302 omits as unnecessary the listing of specific unincorporated associations. The section is necessary to satisfy the requirement of Security First Nat'l Bank v. Cooper, 62 Cal. App.2d 653, 145 P.2d 722 (1944), that an unincorporated association must have unanimous consent of its members to incorporate unless a provision for incorporation exists in its governing regulations or in the statute under which it desires to incorporate. Consent is implied in the second situation. Accordingly, Section 302 avoids the necessity for unanimous consent if the association or organization is incorporating as a nonprofit corporation under this division. It should be noted that dissenting members of the unincorporated association need not become members of the new corporation. See Section 504.

Subdivision (b) permits subordinate bodies (defined by Section 165) to incorporate under this division. It continues the provisions of former Section 9203 regarding the incorporation of these bodies. Special rules apply to the dissolution of a subordinate body when its head or national body revokes its charter. See Section 1609.5.

405-851

§ 1609.5. Involuntary dissolution of a subordinate body

1609.5. (a) Whenever the charter of a subordinate body is surrendered to, taken away, or revoked by the head or national body granting it, the subordinate body shall dissolve.

(b) When dissolving and winding up its affairs, a subordinate body shall pay its debts and obligations or make adequate provision therefor. In addition, the subordinate body may collect obligations owed to it and may sell property which is not designed for the exclusive use of the organization. For the purpose of paying its debts or obligations, it may

sell any of its property, including property designed for the exclusive use of the organization.

(c) After satisfying the requirements of subdivision (b), the subordinate body shall deliver any remaining property or obligations owed to it and any remaining proceeds of the sale of property to the head or national body to be disposed of in accordance with the laws of the head or national body.

Comment. Section 1609.5 supersedes former Section 9802 of the Corporations Code. This provision differs from the former section only in that subdivision (b) makes clear that the subordinate body may sell any of its property for the purpose of paying its debts or obligations.

It should be noted that the dissolution procedures set forth in this section apply only when a subordinate body is dissolving because its charter has been revoked by the head or national body or surrendered to that body. A subordinate body may also be dissolved pursuant to other involuntary proceedings as provided in this article or by board and membership resolution as provided in Article 1 (commencing with Section 1501) of this chapter.

EXHIBIT II

406-190

§ 2001

DIVISION 3. NONPROFIT CORPORATIONS FOR SPECIFIC PURPOSES

CHAPTER 1. CORPORATIONS SOLE

§ 2001. Formation

2001. A corporation sole may be formed under this chapter by the bishop, chief priest, presiding elder, or other presiding officer of any religious denomination, society, or church, for the purpose of administering and managing the affairs, property, and temporalities thereof.

Comment. Section 2001 is the same as former Corporations Code Section 10002.

406-191

§ 2002. Contents of articles of incorporation

2002. (a) The articles of incorporation shall state:

- (1) The name of the corporation.
- (2) That the officer forming the corporation is duly authorized by the rules, regulations, or discipline of the religious denomination, society, or church to take such action.
- (3) The county in this state where the principal office for the transaction of the business of the corporation is located.
- (4) The manner in which any vacancy occurring in the office of the bishop, chief priest, presiding elder, or other presiding officer is required to be filled by the rules, regulations, or constitution of the denomination, society, or church.

(b) The articles of incorporation may state any desired provision for the regulation of the affairs of the corporation in a manner not in conflict with law, including restrictions upon the power to amend all or any part of the articles of incorporation.

Comment. Section 2202 continues the provisions of former Sections 10003 and 10004 of the Corporations Code.

406-192

§ 2003. Execution of articles; filing with Secretary of State

2003. The articles shall be signed and verified by the bishop, chief priest, presiding elder, or other presiding officer forming the corporation and shall be submitted to the Secretary of State for filing in his office. If they conform to law, the Secretary of State shall file them and endorse the date of filing thereon. Upon the filing of the articles with the Secretary of State, the corporation sole is formed.

Comment. Section 2003 is the same in substance as former Corporations Code Section 10005. It should be noted that there is no longer a requirement that articles be filed with the county clerk. Compare former Corp. Code § 10006.

406-193

§ 2004. Amendment of articles; execution; filing

2004. (a) The presiding officer of a corporation sole may at any time amend the articles of incorporation of the corporation changing its name, the term of its existence, its territorial jurisdiction, or the

manner of filling any vacancy in the office thereof, and may by amended articles of incorporation make provision for any act or thing for which provision is authorized in original articles of incorporation of corporations sole.

(b) The presiding officer of the corporation shall sign and verify a statement setting forth the provisions of the amendment and stating that it has been duly authorized by the religious organization governed by the corporation.

(c) The amendment shall be submitted to the Secretary of State for filing in his office. If it conforms to law, the Secretary of State shall file it and endorse the date of filing thereon. Thereupon the articles are amended in the manner set forth in the statement.

Comment. Section 2004 is the same in substance as former Corporations Code Section 10010. It should be noted that amended articles no longer need be filed with the county clerk. Compare former Corp. Code § 10011.

406-194

§ 2005. Powers

2005. Every corporation sole may:

(a) Sue and be sued, and defend, in all courts and places, in all matters and proceedings without limitation.

(b) Contract, in the same manner and to the same extent as a natural person, for the purposes of the trust.

(c) Borrow money, and give promissory notes therefor, and secure the payment thereof by mortgage or other lien upon property real or personal.

(d) Buy, sell, lease, mortgage, and in every way deal in real and personal property in the same manner that a natural person may, without the order of any court.

(e) Receive bequests and devises for its own use or upon trusts to the same extent as natural persons may, subject, however, to the laws regulating the transfer of property by will.

(f) Appoint attorneys in fact.

Comment. Section 2005 is the same in substance as former Corporations Code Section 10007.

406-195

§ 2006. Perpetual existence; effect of vacancy

2006. (a) Every corporation sole has perpetual existence and also has continuity of existence notwithstanding vacancies in the office of the presiding officer of the corporation.

(b) During the period of any vacancy in the office of the presiding officer of the corporation, the corporation sole has the same capacity and right to receive and take any gift, bequest, devise, or conveyance of property, either as grantee for its own use, or as trustee, and to be or be made the beneficiary of a trust, as though there were no vacancy.

(c) No agency created by a corporation sole by a written instrument which in express terms provides that the agency thereby created shall not be terminated by a vacancy in the office of the presiding officer of the corporation is terminated or affected by the death of the presiding officer of the corporation or by a vacancy in such office thereof however caused.

Comment. Section 2006 is the same in substance as former Corporations Code Section 10008.

406-196

§ 2007. Voluntary dissolution; declaration of dissolution

2007. A corporation sole may be dissolved and its affairs wound up voluntarily by filing with the Secretary of State a declaration of dissolution executed, signed, and verified by the presiding officer of the corporation.

Comment. Section 2007 is the same in substance as former Corporations Code Section 10012.

406-197

§ 2008. Contents of declaration

2008. The declaration of dissolution shall set forth all of the following:

- (a) The name of the corporation.
- (b) The reason for its dissolution or winding up.
- (c) That dissolution of the corporation has been duly authorized by the religious organization governed by the corporation sole.
- (d) The names and addresses of the persons who are to supervise the winding up of the affairs of the corporation.

Comment. Section 2008 is the same as former Corporations Code Section 10013.

§ 2009. Effect of filing declaration of dissolution

2009. If the declaration of dissolution submitted to the Secretary of State for filing conforms to law, he shall file it and endorse the date of filing thereon. Thereupon the corporation shall cease to carry on its activities except for the purpose of adjusting and winding up its affairs.

Comment. Section 2009 is substantially the same as the first paragraph of former Corporations Code Section 10014. It should be noted that a corporation sole which is dissolving is no longer required to file a copy of the declaration of dissolution with the county clerk. Compare former Corp. Code § 10014.

406-199

§ 2010. Disposition of assets

2010. After the debts and obligations of the corporation are paid or adequately provided for, any assets remaining shall be transferred to the religious organization governed by the corporation sole, or to trustees in its behalf, or disposed of as may be decreed by the superior court of the county in which the dissolved corporation had its principal office upon petition therefor by the Attorney General or any person connected with the organization.

Comment. Section 2010 is the same as former Corporations Code Section 10015.

§ 2011. Articles as evidence

2011. When filed with the Secretary of State, the articles or amended articles or certified copies of articles or amended articles have the same force and effect in evidence as do properly certified articles of other nonprofit corporations.

Comment. Section 2011 continues the substance of the last paragraph of former Corporations Code Section 10006 and the last paragraph of former Corporations Code Section 10011. See Section (articles as evidence).

406-201

§ 2012. Judicial access to corporate books

2012. Any judge of the superior court in the county in which a corporation sole has its principal office shall at all times have access to the books of the corporation.

Comment. Section 2012 is the same as former Corporations Code Section 10009.

406-202

§ 2013. Application to existing corporations sole

2013. (a) This chapter applies to every corporation sole now existing or hereafter formed.

(b) All corporations sole which are now existing shall be deemed incorporated under this chapter.

Comment. Section 2013 is new. Under the former law, Section 10000 of the Corporations Code, a corporation sole formed prior to March 30, 1878, was permitted to elect whether or not it was to continue its existence under the Corporations Code. If the corporation sole did not elect to continue under the Corporations Code, former Sections 10002 (purposes) and 10012-10015, inclusive (dissolution procedures), of the Corporations Code did not apply to that corporation. In the interest of uniformity, Section 2013 abandons the prior approach and makes the provisions of this chapter applicable to any corporation sole heretofore or hereafter formed.

Analysis

No good reason could be discovered for retaining those provisions of the present law governing corporations sole which permit corporations sole formed prior to 1878 (if they exist) to elect not to be governed by the limitations on purposes or the dissolution procedures of the present statute. The staff has not found any case which makes this distinction important. Moreover, all corporations sole, whenever formed, should logically be treated alike. It should be noted that there are no constitutional problems in making these provisions applicable to all corporations sole. All corporations in California were formed under the condition that the state reserves the power to change the corporation laws. See Cal. Const. 1849, Art. IV, § 31.

CHAPTER 2. CORPORATIONS FOR PREVENTION OF CRUELTY

Article 1. Special Provisions Applicable to
Corporations for Prevention of Cruelty

§ 2101. "Corporation"

2101. As used in this chapter, "corporation" means a nonprofit corporation for the prevention of cruelty to children or animals or both.

Comment. Section 2101 defines "corporation" to avoid the need to repeat "nonprofit corporation for the prevention of cruelty to children or animals or both" each time it is necessary to make reference to nonprofit corporations formed for either or both of those purposes.

406-204

§ 2102. Application of chapter

2102. This chapter applies to any nonprofit corporation heretofore or hereafter formed for the prevention of cruelty to children or animals or both.

Comment. Section 2102 supersedes former Section 10406 of the Corporations Code. Section 10406 made the provisions continued in this chapter applicable to all corporations for the prevention of cruelty to children or animals without regard to when the corporation was formed. The provision of former Section 10406 that made the provisions continued in this chapter not applicable to any association, society, or corporation whose name was the same or substantially the same as that of a previously existing society or corporation has not been continued; this

provision is unnecessary in view of Section 401 of this code (restrictions on corporate name). See also Section 402 (reservation of corporate name).

406-205

§ 2103. Application of Nonprofit Corporation Law--General Provisions

2103. Except as otherwise provided in this chapter, the Nonprofit Corporation Law--General Provisions, Division 2 (commencing with Section 101), applies to a nonprofit corporation for the prevention of cruelty to children or animals or both.

Comment. Section 2103 continues the substance of former Section 10400 of the Corporations Code insofar as that section made the former "General Nonprofit Corporation Law" applicable to corporations for the prevention of cruelty to children or animals or both. The provision of former Section 10400 which prescribed the number and qualifications of the incorporators has not been continued; this matter is covered by the general provisions in the Nonprofit Corporation Law--General Provisions. See Sections (first directors to be specified in articles), 802-804 (number and qualification of directors).

404-631

§ 2104. Endorsement as to necessity for corporation

2104. (a) The Secretary of State shall not file the original articles of a corporation unless the necessity for the corporation is established by an endorsement by the Department of Justice or by a judge of the superior court of the county in which the principal office of the corporation is located.

(b) The endorsement of the judge of the superior court shall not be granted unless the endorsement of the Department of Justice has been first refused or withheld for more than 90 days.

(c) If the endorsement of the Department of Justice is withheld for more than 90 days or is refused, application for an endorsement may be made to the superior court of the county in which the principal office of the corporation is located. After giving due consideration to the necessity of the corporation and assuring himself that the persons forming the corporation are acting in good faith, the judge may, in his discretion, endorse the articles.

Comment. Section 2104 continues the substance of former Sections 10401 and 10402 of the Corporations Code.

ISSUE TO BE RESOLVED:

1. Should the endorsement requirement be continued?

404-632

§ 2105. Limit on realty holdings

2105. No corporation shall hold real property the annual income of which exceeds fifty thousand dollars (\$50,000).

Comment. Section 2105 continues the limitation formerly found in Section 10403 of the Corporations Code. The portion of Section 10403 which authorized the acquisition of property has been omitted as unnecessary since it duplicated the general provision found in Section 303.

ISSUE TO BE RESOLVED:

1. Should the limit on realty holdings be continued?

§ 2106. Enforcement of laws relating to children or animals

2106. (a) The corporation, or any member or officer thereof, may prefer a complaint against any person, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children or animals and may aid in the prosecution of any such offender before such court or magistrate.

(b) All magistrates, constables, sheriffs, and officers of police shall, as occasion may require, aid the corporation, its officers, members, and agents in the enforcement of all laws relating to or affecting children or animals.

Comment. Section 2106 continues the substance of former Sections 10404 and 10405 of the Corporations Code.

ISSUES TO BE RESOLVED:

1. Is this section necessary?
2. Should subdivision (b) apply to all law enforcement officers?

§ 2107. Compensation by city or county

2107. A city or county may pay compensation to the corporation for its work, in that city or county, in actively enforcing the laws relating to the prevention of cruelty to animals or children, arresting or prosecuting offenders of such laws, or preventing cruelty to animals or children. Compensation under this section shall be paid only if the governing body of the city or county so determines and shall not exceed five hundred dollars (\$500) per calendar month. Payment shall be made in the same manner as other claims against the city or county are paid.

Comment. Section 2107 continues the substance of former Civil Code Section 607e.

ISSUES TO BE RESOLVED:

1. Should the \$500 limit be retained?
2. Is there a better place for compilation of this provision?

404-635

Article 2. Humane Officers

§ 2150. Appointment

2150. The corporation may, by resolution of its board of directors entered on its minutes, appoint any number of its members, who are citizens of this state, as humane officers. Each appointment of a humane officer shall be by separate resolution. The resolution shall state the full name and place of residence and the business or occupation of the person so appointed and the fact that he is a citizen of this state and shall also designate the number of the badge to be allotted to such officer.

Comment. Section 2150 is the same in substance as the first paragraph of former Section 607f of the Civil Code.

ISSUE TO BE RESOLVED:

1. Should the citizenship requirement be retained?
2. Should this entire article be compiled in the Health and Safety Code?

404-636

§ 2151. Qualifications; confirmation

2151. (a) Upon appointment, the corporation shall recommend the appointee to the superior court for the county in which the appointee

resides and shall deliver to the court a copy of the resolution appointing such person, certified to be correct by the president and secretary of such corporation and attested by its seal, together with the fingerprints of the appointee taken on standard 8 x 8-inch cards.

(b) The court shall send a copy of the resolution, together with the fingerprints of the appointee, to the Department of Justice which shall thereupon submit to the court, in writing, a report of the record in its possession, if any, of the appointee. If the Department of Justice has no record of the appointee, it shall so report to the court in writing.

(c) Upon receipt of the report, the court shall review the matter of the appointee's qualifications and fitness to act as a humane officer. If the court reaffirms the appointment, it shall so state on a court order confirming the appointment. The appointee shall thereupon file a certified copy of the court order in the office of the county clerk and shall at the same time take and subscribe the oath of office prescribed for constables or other peace officers.

Comment. Section 2151 is the same in substance as the second, third, and fourth paragraphs of former Section 607f of the Civil Code.

404-637

§ 2152. Record of humane officers; filing fee

2152. (a) Upon receipt of the certified copy of a court order confirming an appointment, the county clerk shall thereupon immediately

enter in a book to be kept in his office and designated "Record of Humane Officers" the name of the officer, the number of his badge, the name of the judge appointing him, and the date of such filing.

(b) At the time of such filing, the county clerk shall collect from the officer a fee of fifty cents (\$0.50), which covers all services to be performed by the county clerk under the provisions of this article.

Comment. Section 2152 is the same in substance as the fifth paragraph of former Section 607f of the Civil Code.

404-638

§ 2153. Expiration of appointment; reappointment

2153. The appointment of a humane officer automatically expires three years from the date on which the certified copy of the court order was filed with the county clerk. An officer whose appointment is about to expire may only be reappointed in the same manner as is provided for a new appointment.

Comment. Section 2153 is the same in substance as the sixth paragraph of former Section 607f of the Civil Code.

404-639

§ 2154. Revocation of appointment

2154. The corporation appointing an officer may revoke the appointment at any time by filing in the office of the county clerk in which

the appointment of such officer is recorded a copy of such revocation in writing under the letterhead of the corporation and duly certified by its executive officer. Upon such filing, the county clerk shall enter the fact of such revocation and the date of the filing thereof opposite the name of the officer in the record of humane officers.

Comment. Section 2154 is the same in substance as the seventh paragraph of former Section 607f of the Civil Code.

404-640

§ 2155. Authority; weapons

2155. (a) A humane officer, after qualifying as provided in this article, has power at all places within the state lawfully to interfere to prevent the perpetration of any act of cruelty upon any dumb animal and may use such force as may be necessary to prevent the same and to that end may summon to his aid any bystander. He may make arrests for the violation of any penal law of this state relating to or affecting animals in the same manner as a constable or other peace officer.

(b) Except as otherwise provided by this subdivision, a humane officer shall serve only in the county in which he is appointed. A humane officer may serve in a county other than that in which he is appointed only if he first informs the sheriff of the county that he intends to serve in such county.

(c) A humane officer is authorized to carry weapons while engaged in his duties as a humane officer only upon satisfactory completion of

training, as approved by the Commission on Peace Officer Standards and Training, in the use of weapons.

Comment. Section 2155 is the same in substance as the eighth paragraph of former Section 607f of the Civil Code.

404-641

§ 2156. Exhibiting badge when making arrest

2156. When making an arrest, the humane officer shall exhibit and expose a suitable badge which has been adopted by the corporation of which he is a member. The badge shall bear the name of the corporation and a number.

Comment. Sections 2156-2158 continue the substance of the ninth paragraph of former Section 607f of the Civil Code.

404-642

§ 2157. Resisting arrest a misdemeanor

2157. A person who resists a humane officer in the performance of his duties under this article is guilty of a misdemeanor.

Comment. See the Comment to Section 2156.

§ 2158. Misrepresenting oneself as humane officer

2158. A person who represents himself to be or attempts to act as a humane officer is guilty of a misdemeanor if:

(a) He has not been appointed and qualified as a humane officer as provided in this article;

(b) His appointment has been revoked as provided in this article;
or

(c) His appointment has expired and has not been renewed as provided in this article.

Comment. See the Comment to Section 2156.

404-644

§ 2159. Issuance of notices to appear in court for violations of animal control laws

2159. The governing body of a local agency, by ordinance, may authorize any humane officer employed by a corporation which has contracted with such local agency to provide animal care or protection services to issue notices to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code for violations of state or local animal control laws. Such employees are not authorized to take any person into custody even though the person to whom the notice is delivered does not give his written promise to appear in court. The authority of such employees is to be limited to the jurisdiction of the local agency authorizing the employees.

Comment. Section 2159 is the same as former Section 607g of the Civil Code.

CHAPTER 3. CORPORATIONS DEFRAYING COSTS
OF PROFESSIONAL SERVICES

§ 2201. Corporations defraying costs of legal services

2201. A nonprofit corporation may be formed under the Nonprofit Corporation Law--General Provisions for the purposes of administering a system or systems of defraying the cost of professional services of attorneys, but it may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(a) The attorneys furnishing professional services pursuant to such system or systems are acting in compliance with the Rules of Professional Conduct of the State Bar of California concerning such system or systems.

(b) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all active members of the State Bar.

(c) Voting by proxy and cumulative voting are prohibited.

(d) A certificate is issued to the corporation by the State Bar of California, finding compliance with the requirements of subdivisions (a), (b), and (c).

Comment. Section 2201 is the same in substance as former Corporations Code Section 9201.2 except that the last sentence of that section has been continued in Section 2203. It should be noted that nothing in Section 2201 precludes a corporation engaged in assuming or defraying the costs of legal services from incorporating under another applicable provision; in such case, the restrictions of Section 2201 do not apply. See Section 2204 and the Comment to that section.

§ 2202. Corporations defraying costs of healing art services

2202. (a) A nonprofit corporation may be formed under the Nonprofit Corporation Law--General Provisions for the purposes of defraying or assuming the cost of professional services of licentiates under any chapter of Division 2 (commencing with Section 500) of the Business and Professions Code or of rendering any such services, but it may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(1) At least one-fourth of all licentiates of the particular profession residing in California become members.

(2) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all licensed members of the particular profession.

(3) Voting by proxy and cumulative voting are prohibited.

(4) A certificate is issued to the corporation by the particular professional board whose licentiates have become members, finding compliance with the requirements of paragraphs (1), (2), and (3).

(b) A nonprofit corporation formed under this section which defrays or assumes some portion or all of the costs of refractions or eye appliances shall offer an equal opportunity to render professional services upon a uniform basis to all licentiates expressly authorized by law to render such services.

Comment. Section 2202 is the same in substance as former Corporations Code Sections 9201 and 9201.1 except that the last sentence of former Section 9201 has been continued in Section 2203. It should be

noted that nothing in Section 2202 precludes a corporation engaged in assuming or defraying the costs of healing arts services from incorporating under another applicable provision; in such case, the restrictions of Section 2202 do not apply. See Section 2204 and the Comment to that section.

404-647

§ 2203. Supervision

2203. A nonprofit corporation governed by this chapter is subject to supervision by the particular professional board under which its members are licensed and is also subject to Chapter 11 (commencing with Section 1901) of the Nonprofit Corporation Law--General Provisions.

Comment. Section 2203 continues the substance of the last sentence of former Sections 9201 and 9201.2 of the Corporations Code (General Nonprofit Corporation Law). It provides for supervision of the corporation's activities both by the Attorney General pursuant to Section 1901 and by the professional board under which the corporation's members are licensed.

404-648

§ 2204. Effect on other arrangements to defray costs of professional services

2204. Nothing in this chapter prohibits the formation and conduct of any group, prepaid, or other arrangement for the purpose of defraying or assuming the costs of professional services described in Section 2201

or 2202 whether such arrangement is organized as an unincorporated association or pursuant to the Nonprofit Corporation Law--General Provisions, and nothing in this chapter requires that such arrangements comply with the requirements stated in Section 2201 or 2202 if the persons furnishing the professional services under such arrangement are acting in compliance with any applicable rules of professional conduct concerning such arrangements adopted by the particular professional board under which such persons are licensed.

Comment. Section 2204 is based upon Section 1.5 of Chapter 894 of the Statutes of 1972, which related to legal service arrangements. Similarly, former Section 9201 of the Corporations Code (concerning arrangements for professional services by persons licensed in the healing arts) did not preclude such arrangements from being incorporated under the general provisions of former Section 9200, thereby avoiding the requirements of former Section 9201. Complete Service Bureau v. San Diego County Medical Society, 43 Cal.2d 201, 272 P.2d 497 (1954) (the language of former Section 9201 is permissive so corporations permitted to incorporate under that section may also incorporate under former Section 9200). Section 2204 continues the holding under former law that nonprofit corporations engaged in assuming or defraying the cost of healing arts services were not required to satisfy the restrictions of former Section 9201 (continued in this chapter as Section 2202). Thus, for example, mutual or fraternal nonprofit corporations engaged in such activities need not comply with the requirement that the nonprofit corporation include as members "one-fourth of the licentiates of a particular profession." However, the persons furnishing professional services for any nonprofit corporations engaged in assuming or defraying the cost of healing arts must comply with the applicable rules, if any, of professional conduct concerning such arrangements adopted by the particular professional board under which such persons are licensed.

§ 2205. Application to existing corporations

2205. For the purposes of this chapter:

(a) A nonprofit corporation formed under former Section 9201 of the Corporations Code is deemed to be a nonprofit corporation formed under Section 2202.

(b) A nonprofit corporation formed under former Section 9201.2 of the Corporations Code is deemed to be a nonprofit corporation formed under Section 2201.

Comment. Section 2205 makes clear that those nonprofit corporations formed under former Corporations Code Sections 9201 and 9201.2 are governed by the provisions of this chapter. Nonprofit corporations formed under prior law for the purposes of defraying or assuming the cost of professional services which were not governed by former Section 9201 or 9201.2 are not, however, governed by the provisions of this chapter except to the extent stated in Section 2204. See Section 2204 and the Comment to that section.

CHAPTER 4. PORT AND TERMINAL PROTECTION
AND DEVELOPMENT CORPORATIONS

§ 2301. "Public agency"

2301. As used in this chapter, "public agency," includes a port district, river port district, municipal port district, harbor district, harbor improvement district, joint harbor improvement district, board of harbor commissioners, city, or county.

Comment. Section 2301 is the same in substance as former Section 10700 of the Corporations Code. The reference to the Board of State Harbor Commissioners in former Section 10700 has been deleted since this board no longer exists. See Cal. Stats. 1970, Ch. 385, § 2, repealing former Govt. Code § 1700 et seq.

404-651

§ 2302. Public agency's authority to participate in nonprofit corporation

2302. A public agency owning or operating any port or marine terminal or organized for such purposes may associate itself with other public agencies, private corporations, and individuals in the formation under the Nonprofit Corporation Law--General Provisions, and may become and remain a member, of a nonprofit corporation organized under the Nonprofit Corporation Law--General Provisions for the purpose of carrying on a program of nonregulatory activities in the common interests of its members including but not limited to any or all of the following activities:

(a) Studies and research into traffic conditions, cargo volume, rate structures, cost factors, commercial transportation practices, and similar fields, and the acquisition and dissemination of information relative to these and similar subjects.

(b) The representation of the common interests of its members before federal, state, and local legislative and administrative authorities.

(c) Service as a facility for the cooperation of its members and the coordination of their activities toward the maintenance and improvement of the commercial welfare and competitive position of the ports and terminals owned or operated by its members, the maintenance of equitable and nondiscriminatory rate structures, and the elimination of inequitable, unfair, or discriminatory trade practices adversely affecting the interests of its members.

(d) The undertaking or coordination of any other program of related activities or in related fields for the mutual benefit of its members as may be desired by the membership.

Comment. Sections 2302, 2303, and 2304 continue the substance of former Corporations Code Section 10701. The reference in former Section 10701 to incorporators has been omitted since incorporators are no longer provided for in the Nonprofit Corporation Law-General Provisions. See the Comment to Section 201. The portion of former Section 10701 defining a public agency as a "person" for the purposes of the Nonprofit Corporation Law-General Provisions has been omitted as unnecessary.

§ 2303. Powers of participating public agency

2303. A public agency participating as a member of a nonprofit corporation as provided in Section 2302 may engage in the following activities:

(a) Pay the dues and assessments required by the nonprofit corporation of its members.

(b) Make contracts or enter into agreements necessary to carry out the purposes of this chapter.

(c) Appoint an individual as its representative to the nonprofit corporation to exercise the voting power of the public agency and to act in its behalf with respect to such nonprofit corporation.

(d) Perform all other acts necessary and proper to carry out the purposes of this chapter.

Comment. See the Comment to Section 2302.

§ 2304. Limitation on liability for assessments

2304. No public agency shall become or remain a member of a nonprofit corporation pursuant to this chapter unless the articles of incorporation or bylaws of the nonprofit corporation include at all times a provision limiting the liability of members for assessments to a specified or clearly ascertainable amount.

Comment. See the Comment to Section 2302.

§ 2305. Exemptions; securities regulations; taxation

2305. When and during such times as public agencies or individuals authorized to represent them and act in their behalf constitute a majority of the directors and are entitled to exercise a majority of the voting power of a nonprofit corporation pursuant to this chapter:

(a) The Corporate Securities Law does not apply to memberships nor to membership certificates issued by the corporation; and

(b) The corporation is exempt from payment of any taxes under the Bank and Corporation Tax Law (Part 11 of Division 2 of the Revenue and Taxation Code) except as provided in Article 2 of Chapter 4 thereof.

Comment. Section 2305 is the same in substance as former Corporations Code Section 10703. The reference to incorporators has been deleted in conformity with Section 201. See the Comment to that section.

EXHIBIT III

404-381

§ 395.2

Code of Civil Procedure § 395.2. Action against unincorporated association (amended)

395.2. Subject to the power of the court to change the place of trial as in other cases, a proper county for the trial of an action against an unincorporated association is:

(a) The county where the contract is made or is to be performed, or where the obligation or liability arises, or where the breach occurs; or

(b) If an the unincorporated association has filed a statement with the Secretary of State pursuant to Section 24003 of the Corporations Code listing its principal office in this state, the proper county for the trial of an action against such unincorporated association is the same as it would be if the unincorporated association were a corporation and, for the purpose of determining such county, the principal place of business of the unincorporated association shall be deemed to be in which the principal office in this state so listed in the statement is situated; or

(c) If the unincorporated association is not one described in subdivision (b), any county in which any member of the association resides at the commencement of the action .

Comment. Section 395.2 is amended to state in one section the rules governing venue in actions against unincorporated associations. Subdivision (a) continues the rule formerly stated in Section 395.5. Subdivision (b) continues the substance of the rule previously stated in

Section 395.2. Subdivision (c) codifies the rule stated in Juneau Spruce Corp. v. Int'l Longshoremen's & Warehousemen's Union, 37 Cal.2d 760, 235 P.2d 607 (1951) (construing Section 395 of the Code of Civil Procedure).

404-382

Code of Civil Procedure § 395.5. Action against corporation (technical amendment)

395.5. Subject to the power of the court to change the place of trial as in other cases, a proper county for the trial of an action against a corporation or association may be sued in the is:

(a) The county where the contract is made or is to be performed, or where the obligation or liability arises, or where the breach occurs; or in

(b) If the corporation is other than a nonprofit corporation, the county where the principal place of office in this state for the transaction of the business of such corporation is situated ; subject to the power of the court to change the place of trial as in other cases .

(c) If the corporation is a nonprofit corporation, the county where the principal office in this state for the transaction of the affairs of such corporation is situated.

Comment. Section 395.5 is amended to conform to the terminology used in the Corporations Code and the Nonprofit Corporations Code. The amendment is intended to make clear that the place designated in the articles of incorporation pursuant to Corporations Code Section 301(c)

or Nonprofit Corporations Code Section 501(d) as the principal office for the transaction of business or, in the case of a nonprofit corporation, affairs of the corporation is equivalent to the requirements of this section for the purpose of venue. This result codifies the holding of Hardin v. San Jose City Lines, 103 Cal. App.2d 688, 230 P.2d 31 (1951) (corporation cannot defeat jurisdiction by showing that it has no place of business in the county or district designated in its articles). Cf. Gutierrez v. Superior Court, 243 Cal. App.2d 710, 52 Cal. Rptr. 592 (1966). The reference to venue against associations has been deleted from Section 395.5; this is now covered in Section 395.2.

EXHIBIT IV

404-383

§ 12000

CONFORMING CHANGES IN EXISTING STATUTES

CHAMBERS OF COMMERCE, BOARDS OF TRADE, MECHANICS' INSTITUTES

Corporations Code § 12000 (technical amendment)

12000. Corporations for the formation and organization of chambers of commerce, boards of trade, mechanics' institutes, and other associations for the extension and promotion of trade and commerce, or the advancement, protection, and improvement of the mechanic arts, may be formed with or without capital stock by 20 or more persons. If the corporation is to issue shares it may be incorporated in the manner prescribed in the General Corporation Law (Division 1 (commencing with Section 100) of the Corporations Code) , or it may be incorporated without shares as provided in the ~~General~~ Nonprofit Corporation Law Law--General Provisions (Division 2 (commencing with Section 101) of the Nonprofit Corporations Code) .

No corporation formed under this part shall engage in any mercantile, commercial, or mechanical business.

Comment. Section 12000 is amended to make reference to the Nonprofit Corporation Law--General Provisions instead of to the former General Nonprofit Corporation Law which it supersedes.

COOPERATIVE CORPORATIONS

Corporations Code § 12205 (technical amendment)

12205. The provisions of Division 2 of Title 1 of this code, relating to nonprofit corporations, apply Nonprofit Corporation Law--General Provisions (Division 2 (commencing with Section 101) of the Nonprofit Corporations Code applies to cooperative corporations formed under this part, except where such provisions are it is in conflict with those of this part. Corporations formed under this part have and enjoy all rights, powers, and privileges granted generally to nonprofit corporations by the laws of this state, except as may be inconsistent with the provisions of this part.

Comment. Section 12205 is amended to make reference to the Nonprofit Corporation Law-General Provisions instead of to the former General Non-profit Corporation Law which it supersedes.

404-385

CALIFORNIA JOB CREATION CORPORATION

Corporations Code § 14080 (technical amendment)

14080. The provisions of the General Nonprofit Corporation Law ~~(Part 1 (commencing with Section 9000), Division 2 of this title)~~ relative to nonprofit corporations apply Law--General Provisions (Division 2 (commencing with Section 101) of the Nonprofit Corporations Code)

applies to corporations formed under this chapter, except as to matters otherwise provided for in this chapter.

Comment. Section 14080 is amended to make reference to the Nonprofit Corporation Law-General Provisions instead of to the former General Non-profit Corporation Law which it supersedes.

404-386

CORPORATIONS TO ADMINISTER LIBRARIES

Education Code § 28704 (technical amendment)

28704. Each corporation incorporated under this chapter (commencing at Section 28001) shall have the powers granted by the provisions of the Nonprofit Corporations Code and other laws of the state relating to private nonprofit corporations, which are not inconsistent with those granted by this chapter (commencing at Section 28001).

Comment. Section 28704 is amended to refer to the Nonprofit Corporations Code which supersedes the Corporations Code insofar as that law applied to nonprofit corporations.

404-387

PRIVATE COLLEGES, SCHOOLS, AND INSTITUTIONS GENERALLY

Education Code § 29018 (technical amendment)

29018. (a) If a corporation formed pursuant to this article is to be authorized to issue shares of stock, the articles of incorporation

shall state the total number of shares which the corporation shall have authority to issue and (1) the aggregate par value, if any, of all shares, and the par value of each of the shares, or (2) a statement that all the shares are to be without par value and except as herein provided shall be treated for all purposes as being incorporated pursuant to General Corporation Law (Division 1 (commencing with Section 300) of Title 1 of the Corporations Code) .

(b) If a corporation formed pursuant to this article is to be authorized as a nonprofit corporation without authority to issue shares of stock, the articles of incorporation shall so state and except as herein provided, such corporation shall be treated for all purposes as being incorporated pursuant to ~~Part 1 (embracing Sections 9000 to 9802, inclusive) of Division 2 of Title 1 of the Corporations Code~~ and shall have the general powers granted by ~~Section 10206 of the Corporations Code~~ the Nonprofit Corporation Law--General Provisions (Division 2 (commencing with Section 101) of the Nonprofit Corporations Code) .

Comment. Section 29018 is amended to make reference to the Non-profit Corporation Law--General Provisions instead of to the former General Nonprofit Corporation Law which it supersedes. The reference in the last sentence to the general powers granted by former Section 10206 is deleted. Former Section 10206 (powers of a charitable corporation) is superseded by Section 303 (powers of a nonprofit corporation); therefore, a specific reference to the particular powers of a charitable corporation is no longer necessary.

GUARANTEE OF THRIFT ACCOUNTS

Financial Code § 18961 (technical amendment)

18961. Within 60 days after the effective date of this chapter, ~~all~~ All industrial loan companies which have issued and outstanding investment or thrift obligations, shall establish a corporation under the ~~General~~ Nonprofit Corporation Law ~~(Part 4 (commencing with Section 9000), Division 2, Title 1, Corporations Code)~~ Law--General Provisions (Division 2 (commencing with Section 101) of the Nonprofit Corporations Code) to operate under the name Thrift Guaranty Corporation of California.

Comment. Section 18961 is amended to make reference to the Non-profit Corporation Law--General Provisions instead of to the former General Nonprofit Corporation Law which it supersedes. The introductory clause of the section is deleted as obsolete.

SALE OF LOCAL SECURITIES

Government Code § 5800 (technical amendment)

5800. As used in this chapter, "nonprofit corporation" means any nonprofit corporation formed under the Nonprofit Corporations Code or otherwise, which proposes to aid any public body by issuing securities to finance any one or more public projects.

Comment. Section 5800 is amended to refer to the Nonprofit Corporations Code which supersedes the Corporations Code insofar as it applied to nonprofit corporations.

SURPLUS REAL PROPERTY

Government Code § 50568 (technical amendment)

50568. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Persons and families of low and moderate income" means persons and families financially eligible for admission to developments assisted by the Federal Department of Housing and Urban Development Section 235 and 236 programs.

(b) "Limited dividend housing corporation" means any joint venture, partnership, limited partnership, trust or corporation organized or existing under the laws of this state or authorized to do business in this state and subject to the restrictions of Division 24 of the Health and Safety Code.

(c) "Housing corporation" means a corporation organized pursuant to the community land chest law in Division 24 of the Health and Safety Code.

(d) "Nonprofit corporation" means a nonprofit corporation incorporated pursuant to the ~~provisions of the General Nonprofit Corporation Law~~ Law--General Provisions (Division 2 (commencing with Section 101) of the Nonprofit Corporations Code) and whose articles of incorporation provide that the corporation has been organized exclusively to provide housing facilities for persons of low and moderate income.

Comment. Section 50568 is amended to make reference to the Nonprofit Corporation Law--General Provisions instead of to the former General Nonprofit Corporation Law which it supersedes.

HEALTH FACILITY CONSTRUCTION LOAN INSURANCE

Health & Safety Code § 436.2 (technical amendment)

436.2. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter and of Section 32127.2.

(a) "Bondholder" means the legal owner of a bond or other evidence of indebtedness issued by a political subdivision or a nonprofit corporation.

(b) "Borrower" means a political subdivision or nonprofit corporation which has secured or intends to secure a loan for the construction of a health facility.

(c) "Construction" includes construction of new buildings, expansion, modernization, renovation, remodeling and alteration of existing buildings, and initial or additional equipping of any such buildings. "Construction" also includes consulting, financing, architectural, and engineering costs and fees, cost of land acquisition and site development, including parking facilities, and all other costs necessary or incidental to construct a new building or to expand, modernize, renovate, remodel or alter an existing building.

(d) "Council" means the Advisory Health Council.

(e) "Debenture" means any form of written evidence of indebtedness issued by the State Treasurer pursuant to this chapter, as authorized by Article XIII, Section 21.5 of the California Constitution.

(f) "Department" means the State Department of Health.

(g) "Fund" means the Health Facility Construction Loan Insurance Fund.

(h) "Health facility" means any facility providing or designed to provide services for the acute, convalescent, and chronically ill and impaired, including but not limited to public health centers, community mental health centers, facilities for the mentally retarded, nonprofit community care facilities that provide care, habilitation, rehabilitation or treatment to mentally impaired persons, and general tuberculosis, mental, and other types of hospitals and related facilities, such as laboratories, outpatient departments, extended care, nurses' home and training facilities, offices and central service facilities operated in connection with hospitals, diagnostic or treatment centers, extended care facilities, nursing homes, and rehabilitation facilities. Except for facilities for the mentally retarded, "health facility" does not include any institution furnishing primarily domiciliary care.

(i) "Lender" means the provider of a loan and its successors and assigns.

(j) "Loan" means money or credit advanced for the construction costs of the health facility, and includes both initial loans and loans secured upon refinancing and may include both interim, or short-term loans, and long-term loans. A duly authorized bond or bond issue may constitute a "loan."

(k) "Maturity date" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for by the terms of the loan.

(l) "Mortgage" means a first mortgage on real estate. "Mortgage" includes a first deed of trust.

(m) "Mortgagee" includes a lender whose loan is secured by a mortgage. "Mortgagee" includes a beneficiary of a deed of trust.

(n) "Mortgagor" includes a borrower, a loan to whom is secured by a mortgage, and the trustor of a deed of trust.

(o) "Nonprofit corporation" means any corporation organized under the ~~General Nonprofit Corporation Law (Part 1 (commencing with Section 9000)), Division 2 of the Corporations Code~~ Law--General Provisions (Division 2 (commencing with Section 101) of the Nonprofit Corporations Code), or its equivalent under the laws of the state of incorporation, organized for the purpose of owning and operating a health facility.

(p) "Political subdivision" means any city, county, city and county, and local hospital district.

(q) "Project property" means the real property upon which the health facility is, or is to be, constructed, the health facility, and the initial equipment in such health facility.

(r) "Public health facility" means any health facility which is or will be constructed for and operated and maintained by any city, county, city and county, or local hospital district.

Comment. Section 436.2 is amended to make reference to the Non-profit Corporation Law--General Provisions instead of to the former General Nonprofit Corporation Law which it supersedes.

404-393

VEHICLE REGISTRATION

Vehicle Code § 9870 (technical amendment)

9870. A nonprofit corporation organized solely for charitable purposes pursuant to ~~Part 1 (commencing with Section 9000) or Part 3~~

~~(commencing with Section 10200), Division 2, Title 1 of the Corporations Code~~ the Nonprofit Corporations Law--General Provisions (Division 2 (commencing with Section 101) of the Nonprofit Corporations Code) , which purposes relate to promoting the ability of boys and girls to do things for themselves, to train them in scoutcraft and camping, and to teach them patriotism, courage, self-reliance and kindred virtues, shall not be required to pay the fees provided for in Sections 9853, 9855, 9860, and 9867.

Comment. Section 9370 is amended to make reference to the Non-profit Corporation Law--General Provisions instead of to the former General Nonprofit Corporation Law and the law for Corporations for Charitable or Eleemosynary Purposes which it supersedes.

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