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AB-1228 Fast food restaurant industry: Fast Food Council: health, safety, employment, and minimum wage. (2023-2024)

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Assembly Bill No. 1228

CHAPTER 262

An act to add Part 4.5.5 (commencing with Section 1474) to, and to repeal Part 4.5.5 (commencing with Section 1470) of, Division 2 of the Labor Code, relating to employment.

[Approved by Governor September 28, 2023. Filed with Secretary of State September 28, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1228, Holden. Fast food restaurant industry: Fast Food Council: health, safety, employment, and minimum wage.

Existing law, which is suspended pursuant to a referendum petition, establishes, until January 1, 2029, the Fast Food Council (council) within the Department of Industrial Relations and prescribes its powers. Existing law, among other things, prescribes the purposes, duties, and limitations of the council, including a requirement that the council promulgate minimum fast food restaurant employment standards. Existing law sets standards for any minimum wage the council establishes.

This bill would repeal those existing provisions on January 1, 2024, if a specified referendum is withdrawn by its proponents by that date.

If the referendum is withdrawn, in addition to that repeal, this bill would, until January 1, 2029, or as otherwise provided, establish the Fast Food Council and prescribe the council's purposes, duties, and limitations, as described, establish an hourly minimum wage for fast food restaurant employees, as described, authorize the council to increase the hourly minimum wage pursuant to specified parameters, and set forth requirements, limitations, and procedures for adopting and reviewing fast food restaurant health, safety, and employment standards. The bill would require all standards, rules, and regulations developed by the council to be issued, amended, or repealed, as applicable, in the manner prescribed in the Administrative Procedure Act, but as modified, and would require the council to petition the Occupational Safety and Health Standards Board and the Civil Rights Council if any minimum standards fall within their jurisdiction.

Existing law prohibits, among other things, an employer or any person acting on behalf of the employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, among other individuals and entities, if the employee has reasonable cause to believe that the information discloses specified violations of law, regardless of whether disclosing the information is part of the employee's job duties. Existing law imposes, in addition to other penalties, a civil penalty on certain employers for each violation of this provision, except as specified.

This bill would also deem the council a governmental agency for purposes of the above-described prohibition. The bill would additionally prohibit a fast food restaurant operator from discharging or in any manner discriminating or retaliating against any employee due to the employee's participation in or testimony to any proceeding convened by the council.

This bill would prohibit any city, county, or city and county from enacting or enforcing any ordinance or regulation applicable to fast food restaurant employees that sets the amount of wages or salaries for fast food restaurant employees, except as provided. By imposing additional requirements on local agencies, the bill would impose a state-mandated local program.

Existing law establishes in the Department of Industrial Relations the Division of Labor Standards Enforcement under the direction of the Labor Commissioner. Existing law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation.

This bill would require the Labor Commissioner to enforce compliance with the minimum fast food restaurant employment standards and any other standards promulgated pursuant to the bill's provisions and would set forth procedures for enforcing the standards. By expanding the application of crimes associated with those enforcement procedures, the bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for fast food restaurant workers.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to repeal Sections 1470, 1471, 1472, and 1473 of the Labor Code and enact new Sections 1474, 1475, and 1476 of the Labor Code.

SEC. 2. Part 4.5.5 (commencing with Section 1470) of Division 2 of the Labor Code is repealed.

SEC. 3. Part 4.5.5 (commencing with Section 1474) is added to Division 2 of the Labor Code, to read:

PART 4.5.5. Fast Food

1474. For purposes of this part:

(a) "National fast food chain" means a set of limited-service restaurants consisting of more than 60 establishments nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products, and services, and which are primarily engaged in providing food and beverages for immediate consumption on or off premises where patrons generally order or select items and pay before consuming, with limited or no table service. For purposes of the definitions in this part, "limited-service restaurant" includes, but is not limited to, an establishment with the North American Industry Classification System Code 722513.

(b) "Council" means the Fast Food Council.

(c) (1) Except as provided in paragraph (2), "fast food restaurant" means a limited-service restaurant in the state that is part of a national fast food chain.

(2) "Fast food restaurant" shall not include an establishment that on September 15, 2023, operates a bakery that produces for sale on the establishment's premises bread, as defined under Part 136 of Subchapter B of Chapter I of Title 21 of the Code of Federal Regulations, so long as it continues to operate such a bakery. This exemption applies only where the establishment produces for sale bread as a stand-alone menu item, and does not apply if the bread is available for sale solely as part of another menu item.

(d) "Fast food restaurant franchisee" means a person to whom a fast food restaurant franchise is granted.

(e) "Fast food restaurant franchisor" means a person who grants or has granted a fast food restaurant franchise.

(f) "Fast food restaurant operator" means a person who operates a fast food restaurant.

(g) "Franchise," "franchisee," and "franchisor" have the definitions set forth in Article 1 (commencing with Section 20000) of Chapter 5.5 of Division 8 of the Business and Professions Code.

(h) "Working conditions" include, but are not limited to, wages, conditions affecting fast food restaurant employees' health and safety, security in the workplace, the right to take time off work for protected purposes, and the right to be free from discrimination and harassment in the workplace.

(i) When a restaurant is located and operates within a "grocery establishment," as defined in subdivision (d) of Section 2502, and the grocery establishment employer employs the individuals working in the restaurant, the restaurant shall not be considered a fast food restaurant.

1475. (a) (1) The Fast Food Council is hereby established within the Department of Industrial Relations and shall consist of the following nine voting members:

(A) Two representatives of the fast food restaurant industry.

(B) Two representatives of fast food restaurant franchisees or restaurant owners.

(C) Two representatives of fast food restaurant employees.

(D) Two representatives of advocates for fast food restaurant employees.

(E) One unaffiliated member of the public who is not an owner, franchisee, officer, or employee in the fast food industry; who is not an employee or officer of a labor organization or a member of a labor organization representing fast food restaurant employees; and who has not received income from the fast food industry or any labor organization for a period of two years prior to appointment.

(2) In addition to the voting members, the council shall include the following nonvoting members:

(A) One representative from the Department of Industrial Relations.

(B) One representative from the Governor's Office of Business and Economic Development.

(3) The Governor shall appoint the representatives of fast food restaurant employees, fast food restaurant franchisees or restaurant owners, the fast food restaurant industry, and the member of the public. The Speaker of the Assembly and the Senate Committee on Rules shall each appoint one representative of an advocate for fast food restaurant employees.

(4) The appointments shall be at the will of each appointing power and each member of the council shall serve for a term of four years, except that all terms shall end on the date this section becomes inoperative. All terms that end prior to the date that this section becomes inoperative shall end on January 1. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term. A council member shall not serve more than two consecutive terms.

(5) The unaffiliated member of the public shall be the chairperson of the council. The chairperson shall be responsible for convening the council. The chairperson shall designate a member of the council to act as chairperson in their absence.

(6) Each member of the council shall receive one hundred dollars (\$100) for each day of their actual attendance at meetings of the council and other official business of the council, in addition to their actual necessary traveling expenses incurred in the performance of their duties as a member.

(7) The council may employ necessary assistants, officers, experts, and other employees as it deems necessary, subject to appropriation. All personnel of the council shall be under the supervision of the chairperson or an executive officer to whom the chairperson delegates such responsibility. All such personnel shall be appointed pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except for the one exempt deputy or employee allowed by subdivision (e) of Section 4 of Article VII of the California Constitution.

(8) All meetings of the council shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) The council's purposes are to establish fast food restaurant minimum standards on wages, and develop fast food restaurant minimum standards on working hours, and other working conditions adequate to ensure and maintain the health, safety, and welfare of, and to supply the necessary cost of proper living to, fast food restaurant workers and to ensure and effect interagency coordination and prompt agency responses regarding issues affecting the health, safety, and employment of fast food restaurant workers.

(c) (1) The council shall provide direction to, and coordinate with, state agencies regarding the health, safety, and employment of fast food restaurant workers.

(2) The council shall convene its first meeting by no later than March 15, 2024.

(d) (1) (A) The council is charged with developing minimum fast food restaurant employment standards, including, as appropriate, standards on wages, working conditions, and training, as are reasonably necessary or appropriate to protect and ensure the welfare, including the physical well-being and security, of fast food workers or to otherwise meet the purposes of this section, subject to the limitations of subdivisions (e) and (f). In developing these standards, the council may take account of regional differences. Any change developed by the council to existing standards, rules, or regulations shall not be less protective of or less beneficial to health, safety, or fast food restaurant worker employment terms, conditions, or privileges, including wages, than the immediately preceding standard, rule, or regulation. To the extent there is a conflict between standards, rules, or regulations issued pursuant to this subdivision and those previously issued by another state agency, the standards, rules, or regulations issued pursuant to this subdivision shall apply to fast food restaurant employees, and the conflicting standards, rules, or regulations of the other state agency shall not have force or effect with respect to fast food restaurant employees.

(B) Decisions by the council regarding standards, rules, or regulations shall be made by an affirmative vote of at least five of the council members.

(C) All standards, rules, and regulations developed by the council shall be issued, amended, or repealed, as applicable, in the manner prescribed in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, subject to the provisions of clause (i) to (iii), inclusive, of this subparagraph, and with the exception of standards issued pursuant to the procedures identified in subparagraph (D) of paragraph (2) of this subdivision.

(i) With the exception of standards subject to subdivision (e) or (f), the Labor Commissioner shall be responsible for issuing, amending, or repealing, as applicable, standards developed by the council pursuant to the requirements of this subparagraph.

(ii) The council shall send proposed written standards to the Labor Commissioner and request that the commissioner prepare a notice of proposed rulemaking action regarding the proposed regulatory text.

(iii) Upon receiving a request to prepare a notice of proposed rulemaking action, the Labor Commissioner shall determine whether the proposed written standards are consistent with the council's authority and consistent with the criteria identified in subdivision (a) of Section 11349.1 of the Government Code, and, if it so determines, the commissioner shall prepare and submit to the Office of Administrative Law a notice of proposed rulemaking action and the required materials identified in Section 11346.2 of the Government Code. If the commissioner determines either that the proposed standards are not consistent with the council's authority, or not consistent with the criteria identified in subdivision (a) of Section 11349.1 of the Government Code, the commissioner shall, within 60 days of receiving the council's request to issue a notice of proposed rulemaking, provide the council with a written explanation of the reasons for that determination so the council may modify its proposed standards as appropriate. The commissioner shall also have responsibility and authority to carry out the requirements of Sections 11346.8 and 11346.9 of the Government Code.

(D) The council may develop written emergency standards and send the proposed written emergency standards to the Labor Commissioner and request that the commissioner promulgate such standards pursuant to Sections 11346.1 and 11349.6 of the Government Code.

(2) (A) The hourly minimum wage for fast food restaurant employees shall be twenty dollars (\$20) per hour, effective April 1, 2024. Thereafter, the council may establish, pursuant to this subdivision, minimum wages for fast food restaurant employees that take effect on an annual basis, beginning on January 1, 2025.

(B) The hourly minimum wage established by the council may increase on an annual basis by no more than the lesser of the following, rounded to the nearest ten cents (\$0.10):

(i) 3.5 percent.

(ii) The rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted United States Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. CPI-W).

(C) In establishing minimum wage increases subject to paragraph (B), the council may elect to set minimum wage standards that vary by region or to set a statewide minimum wage increase.

(D) The hourly minimum wage established pursuant to subparagraph (A), and all future hourly minimum wages established pursuant to subparagraph (B), shall constitute the state minimum wage for fast food restaurant employees for all purposes under this code and the wage orders of the Industrial Welfare Commission. It shall be enforceable by the Labor Commissioner through the procedures set forth in Sections 98, 98.1, 98.2, 98.3, 98.7, 98.74, or 1197.1, or by a covered worker through a civil action, through the same means and with the same relief available for violation of any other state minimum wage requirement. The Department of Industrial Relations shall update Wage Order No. 5-2001 and the Minimum Wage Order to be consistent with any minimum hourly wage adopted by the council and any other standards or requirements developed by the council and adopted by the commissioner pursuant to this chapter, except that any existing provision in Wage Order 5-2001 or the Minimum Wage Order providing greater protections or benefits to fast food restaurant employees shall continue in full force and effect, notwithstanding any provision of this part. Hourly minimum wages established by the council pursuant to subparagraphs (A) and (B) shall be treated as wage orders and shall be exempt from Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(E) Any minimum wage established by the council must be equal to or greater than any otherwise generally applicable state hourly minimum wage.

(F) The council shall not establish any minimum wage increase that takes effect commencing on a date after the 2029 calendar year. However, the council may provide advice to any appropriate state agencies regarding minimum wage increases that would take effect commencing on a date on or after January 1, 2030.

(3) Minimum wage standards established by the council shall be subject to any suspension of increases in the statewide minimum wage made pursuant to subdivision (d) of Section 1182.12.

(4) Standards developed pursuant to paragraphs (1) and (2) shall not alter or amend the requirements in the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code).

(5) The council shall provide information as requested by the appropriate committees of the Legislature on labor to facilitate a review of the council's performance and standards under this section, which review may be conducted in a joint hearing held every three years or as otherwise designated by the appropriate committees of the Legislature on labor.

(6) Nothing in this section shall be construed to give the council the authority to create or amend statutes.

(7) Nothing in this section shall be construed to permit the council to develop or promulgate regulations creating new paid time off benefits, such as paid sick leave or paid vacation. For purposes of this paragraph, paid time off benefits do not include paid rest periods.

(8) Nothing in this section shall be construed to permit the council to develop or promulgate regulations regarding predictable scheduling. Predictable scheduling does not include reporting time pay.

(e) To the extent that any minimum standards that the council finds are reasonably necessary to protect fast food restaurant employee health and safety fall within the jurisdiction of the Occupational Safety and Health Standards Board, the council shall petition the Occupational Safety and Health Standards Board for the adoption, amendment, or repeal of any occupational safety and health standard. The Occupational Safety and Health Standards Board shall consider and respond to the petition no later than six months following receipt of the petition in accordance with Section 142.2, or no later than three months if the petition relates to an emergency, as defined in Section 11342.545 of the Government Code. The Occupational Safety and Health Standards Board shall not adopt a standard recommended by the council if it reduces occupational safety and health protections for employees.

(f) To the extent that any minimum standards that the Fast Food Council finds are reasonably necessary fall within the jurisdiction of the Civil Rights Council under Section 12935 of the Government Code, the Fast Food Council shall petition the Civil Rights Council for the adoption, amendment, or repeal of any regulation under the jurisdiction of the Civil Rights Council. The Civil Rights Council shall consider and respond to the petition no later than six months following receipt of the petition, or within no more than three months if the petition relates to an emergency, as defined in Section 11342.545 of the Government Code. The Civil Rights Council shall not adopt a recommended standard that would reduce protections provided under the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or other law within the Civil Rights Council's jurisdiction.

(g) The council shall conduct a full review of the adequacy of the minimum fast food restaurant health, safety, and employment standards at least once every three years. Upon that review, the council shall develop and seek the issuance of any fast food employment, health, or safety standard applicable to fast food restaurants, or a portion of any such standard, as appropriate to meet the purposes of this section, pursuant to the procedures set forth in subdivision (d) and subject to subdivisions (e) and (f).

(h) The council shall hold meetings or hearings no less than every six months that are open to the public, at which the public, including fast food restaurant employees, shall have the opportunity to be heard on issues of fast food restaurant health, safety, and employment conditions. The council shall provide advance public notice of these meetings or hearings that is reasonably calculated to advise fast food restaurant workers, fast food restaurant operators and owners, franchisors, franchisees, community members, and other stakeholders of the opportunity to participate in the meetings or hearings. The location of the meetings or hearings shall rotate among major metropolitan areas throughout the state to provide fast food restaurant workers, fast food restaurant operators and owners, franchisors, franchisees, community members, and other stakeholders throughout the state a reasonable opportunity to participate in a meeting or hearing at least once per each three-year review.

(i) The council may coordinate with local agencies and request that they hold meetings or hearings that are open to the public, at which the public, including fast food restaurant employees, shall have the opportunity to be heard on issues of fast food restaurant health, safety, and employment conditions. After these meetings or hearings, the council may request information from the local agencies, including any recommendations for action by the council.

(j) (1) The minimum wage, maximum hours of work, and other working conditions developed by the council in standards promulgated pursuant to subdivision (d) shall be the minimum wage, maximum hours of work, and the standard conditions of labor for fast food restaurant employees or a relevant subgroup of fast food restaurant employees for purposes of state law. Except as provided in subdivision (m), nothing in this section shall restrict local jurisdictions' exercise of police powers to establish more protective local standards. The employment of a fast food restaurant employee for lower wages or for longer hours than those fixed by the minimum standards promulgated pursuant to subdivision (d), or under any other working conditions prohibited by the minimum standards promulgated pursuant to subdivision (d), is unlawful. Compliance with the minimum fast food restaurant employment standards promulgated pursuant to subdivision (d) shall be enforced by the Labor Commissioner pursuant to the procedures and provisions set forth in Chapter 4 (commencing with Section 79) of Division 1, Division 2 (commencing with Section 200), Division 3 (commencing with Section 2700), and Division 5 (commencing with Section 6300), and standards, orders, or regulations promulgated pursuant to subdivision (d).

(2) Other than occupational safety and health violations, which shall be enforced by the Division of Occupational Safety and Health under Division 5 (commencing with Section 6300), and other than protections against discrimination, harassment, and other violations of Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code, which shall be enforced by the Civil Rights Department, the Labor Commissioner shall enforce this part, including any standards promulgated by the appropriate agency pursuant to subdivision (d), including by investigating an alleged violation, and ordering appropriate temporary relief to mitigate the violation or to maintain the status quo pending the completion of a full investigation or hearing, through the procedures set forth in Chapter 4 (commencing with Section 79) of Division 1 and Section 1197.1, including by issuance of a citation against an employer, a fast food restaurant operator, or any other liable person under this part, and by filing a civil action. If a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in Section 98.74 or 1197.1, as appropriate. In any successful civil action to enforce this section by the Labor Commissioner or an employee, the court may grant injunctive relief in order to obtain compliance with this part, and shall award costs and reasonable attorney's fees.

(3) A standard promulgated pursuant to subdivision (d) shall not supersede a standard covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and a regular hourly rate of pay not less than 30 percent more than the state minimum wage for those employees, if the agreement provides equivalent or greater protection than the standards established by the council and if state law on the same issue authorizes an exception for employees covered by a collective bargaining agreement. Nothing in this section shall be construed to allow a collective bargaining agreement to waive any occupational health and safety protections.

(4) Nothing in this section shall be construed to require local health departments to enforce standards issued by the council.

(k) The Labor Commissioner is authorized to issue any other rules, regulations, and guidance necessary for the enforcement of this part consistent with its authority under Section 98.8.

(l) (1) No ordinance or regulation applicable to fast food restaurant employees that sets the amount of wages or salaries for fast food restaurant employees shall be enacted or enforced by any city, county, or city and county, including charter cities, charter counties, and charter cities and counties.

(2) This subdivision does not preclude a city, county, or city and county, including charter cities, charter counties, and charter cities and counties, from establishing a minimum wage that is generally applicable to all industries.

(3) This subdivision does not preclude any employer that employs fast food restaurant employees from establishing higher wage or compensation rates for its employees or contracted employees.

(4) (A) Subject to subdivision (m), this subdivision shall become inoperative if the hourly minimum wage established pursuant to subparagraph (A) of paragraph (2) of subdivision (d) does not take effect on April 1, 2024, or by a later date arising from a delay or other temporary pause in the implementation of that hourly minimum wage that is forced by an injunction or other proper judicial or administrative action, whichever is later.

(B) Subject to subparagraph (A) of this paragraph and subdivision (m), this subdivision shall remain in effect only so long as the council maintains authority to establish minimum wage increases pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (d).

(m) Subject to Section 1477, subdivisions (a) to (i), inclusive, and (l) of this section shall become inoperative as of January 1, 2029, and the council shall cease operations. Any standards adopted by the appropriate agencies pursuant to this section shall not be impacted by the cessation of the council.

1476. (a) A fast food restaurant operator shall not discharge or in any manner discriminate or retaliate against any employee due to the employee's participation in or testimony to any proceeding convened by the council.

(b) The council shall be deemed a governmental agency for purposes of subdivision (a) of Section 1102.5.

1477. Sections 1474 to 1476, inclusive, shall become operative and shall take effect commencing January 1, 2024, only if Referendum No. 1939 (Attorney General No. 22-0005) has been withdrawn by its proponents by January 1, 2024. If that referendum has not been withdrawn by its proponents by January 1, 2024, Sections 1474 to 1476, inclusive, and this section shall become inoperative on January 1, 2024, and as of that date, are repealed.

SEC. 4. Section 2 shall become operative and take effect commencing January 1, 2024, only if Referendum No. 1939 (Attorney General No. 22-0005) has been withdrawn by its proponents by January 1, 2024.

SEC. 5. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the urgent and immediate need to provide fast food restaurant workers a living wage commensurate with rising costs of living, the large percentage of fast food restaurant workers living at or below the federal poverty line, and the significant number of fast food restaurant workers enrolled in the state's safety net programs.

SEC. 6. The Legislature finds and declares that establishing uniform statewide regulation of certain aspects of minimum wage for fast food restaurant workers, to the extent set forth in Section 3, is a matter of statewide concern. Therefore, Section 3 of this act adding Part 4.5.5 (commencing with Section 1474) to Division 2 of the Labor Code applies to all cities, including charter cities.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.