Volume 4

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1995

Constitution of 1879 as Amended

General Laws, Amendments to the Codes,
and Resolutions passed by the
California Legislature

1995–96 Regular Session
1995–96 First Extraordinary Session
1995–96 Second Extraordinary Session

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(iii) Notice that the caller is required to identify himself or herself to the operator.

(iv) Notice that the caller is required to be 18 years of age or older.

(v) A warning that it is illegal to use information obtained through the "900" number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, or address or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(viii) A statement that the caller should have a reasonable suspicion that a child is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars ($600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) The Department of Justice shall maintain a subdirectory of persons described in subdivision (a) who are deemed by the department to be sexual habitual offenders and a threat to the public safety. The subdirectory shall include a photograph of the offender along with the following information, if available: name, physical description, age, and distinctive markings. The subdirectory shall not include the exact address or the criminal history of the person listed, except to describe the specific crimes for which the registrant was required to register.

(2) The subdirectory shall be organized by county and ZIP Code.

(3) A copy of the subdirectory shall annually be distributed to the offices of county sheriffs and police departments for purposes of public access.

(4) County sheriff's and police departments may require that a person express an articulable purpose in order to have access to the subdirectory.

(5) Any information identifying the victim by name, birthdate, address, or relation to the registrant shall be excluded from the subdirectory distributed for purposes of public access.

(c) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(d) Any person who makes a photocopy of any part of the subdirectory of sexual habitual offenders is guilty of a misdemeanor,

punishable by imprisonment in the county jail not to exceed six months or by a fine not exceeding one thousand dollars ($1,000), or by both. This subdivision shall not apply to a law enforcement officer who makes a photocopy as part of his or her official duties in the course of a criminal investigation or court case.

(e) Unauthorized removal of the subdirectory of sexual habitual offenders from the offices of county sheriffs or any police department is a misdemeanor, punishable by imprisonment in the county jail not to exceed one year or by a fine not exceeding one thousand dollars ($1,000), or by both.

(f) (1) A person is authorized to use information disclosed pursuant to this section only to protect a child at risk. Authorized use includes, but is not limited to, either of the following:

(A) A person in a position of authority or special trust who by reason of that position is able to exercise undue influence over a minor. A position of authority includes, but is not limited to, a natural parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational director who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, or employer.

(B) A person possessing a license or holding an employment or volunteer position with supervisory or disciplinary power over a minor or any person under his or her care, a person who supervises a slumber party, or a babysitter.

This act shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(2) Except as authorized under another provision of law, use of any of the following information disclosed pursuant to this section is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment, except as specified in paragraph (1) of subdivision (f).

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) of subdivision (f) or in violation of paragraph (2) of subdivision (f) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than

two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the "900" number in violation of paragraph (2) of subdivision (f), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(g) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the "900" telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

(1) Number of calls received.

(2) Amount of income earned per year through operation of the "900" telephone number.

(3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.

(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(5) Number of persons listed pursuant to subdivision (a).

(6) A summary of the success of the "900" telephone number program based upon selected factors.

(i) The "900" telephone number program authorized by this section shall terminate operation on January 1, 1998.

(j) This section shall become operative on July 1, 1995, and shall become inoperative on January 1, 1999, and as of that date is repealed unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. 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, notwithstanding Section 17610 of the Government Code, 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. If both this bill and AB 95 or AB 401 are enacted, or all three bills are enacted, amend Section 290 of the Penal Code, and become effective on January 1, 1996, and this bill is chaptered last, Section 2 of this bill shall not become operative.

SEC. 6. Section 3.1 of this bill shall become operative only if this bill and AB 95 are chaptered and become effective on January 1, 1996, in which case Section 3 of this bill shall not become operative.

CHAPTER 841

An act to add and repeal Section 97 of the Streets and Highways Code, and to add and repeal Section 42010 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 97 is added to the Streets and Highways Code, to read:

97. (a) The department, in consultation with the Department of the California Highway Patrol, shall develop three pilot projects, two in northern California and one in southern California. The portions of the highways involved in the projects shall be designated and identified as "Safety Enhancement-Double Fine Zones" and shall be in the following locations:

(1) On Route 37, between the intersection with Route 121 and the intersection with Route 29.

(2) On Route 4, between the intersection with the Cummings Skyway and the intersection with Route 80.

(3) On Route 74, between the intersection with Route 5 and the intersection with the Riverside-Orange County line.

(b) (1) The department shall adopt rules and regulations prescribing uniform standards for warning signs to notify motorists that, pursuant to Section 42010 of the Vehicle Code, increased penalties apply for traffic violations that are committed within Safety Enhancement-Double Fine Zones. The rules and regulations adopted by the department shall include, but not be limited to, a requirement that Safety Enhancement-Double Fine Zones be identified with signs stating: "Special Driving Zone Begins Here" and "Special Driving Zone Ends Here".

(2) The department or local authorities, with respect to highways under their respective jurisdictions, shall place and maintain the warning signs specified in paragraph (1) in areas that have been designated pursuant to subdivision (a).

(3) The department shall report to the Legislature on January 1, 1998, on the results of these pilot projects, including a determination of whether the projects were successful. In its report, the department shall provide a detailed analysis on the impact of the pilot projects on highway safety, including, but not limited to, the number of accidents, traffic injuries, and fatalities in the project areas. A determination that the projects were successful shall be based upon a showing that a statistically significant decrease in the number of accidents, traffic injuries, and fatalities has occurred in the project areas.

(c) Designation of a highway as a Safety Enhancement-Double Fine Zone does not increase the civil liability of the state under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code or any other provision of law relating to civil liability.

(d) The pilot projects specified in subdivision (a) shall not be elevated in priority for state funding purposes.

(e) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 1998, deletes or extends that date.

SEC. 2. Section 42010 is added to the Vehicle Code, to read:

42010. (a) For any offense specified in subdivision (b) that is committed by the driver of a vehicle within an area that has been designated as a Safety Enhancement-Double Fine Zone pursuant to subdivision (a) of Section 97 of the Streets and Highways Code, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed, and, in an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of any of the following provisions is an offense that is subject to subdivision (a):

(1) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(2) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(3) Section 23103, relating to reckless driving.

(4) Section 23104, relating to reckless driving which results in bodily injury to another.

(5) Section 23109, relating to speed contests.

(6) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(7) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(8) Section 23220, relating to drinking while driving.

(9) Section 23221, relating to drinking in a motor vehicle while on the highway.

(10) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(11) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(12) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.

(13) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(14) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when traffic controls or warning signs have been placed pursuant to Section 97 of the Streets and Highways Code.

(d) Notwithstanding any other provision of law, the enhanced fine imposed pursuant to this section shall be based only on the base fine imposed for the underlying offense and shall not include any other enhancements imposed pursuant to law.

(e) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 1998, deletes or extends that date.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 842

An act to amend Section 39 of the Civil Code, and to amend Sections 1801, 3201, 3204, and 3208 of, and to add Sections 810, 811, 812, 813, 814, and 1881 to, the Probate Code, relating to capacity.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 39 of the Civil Code is amended to read:

39. (a) A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before the incapacity of the person has been judicially determined, is subject to rescission, as provided in Chapter 2 (commencing with Section 1688) of Title 5 of Part 2 of Division 3.

(b) A rebuttable presumption affecting the burden of proof that a person is of unsound mind shall exist for purposes of this section if the person is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

SEC. 2. Section 810 is added to the Probate Code, to read:

810. The Legislature finds and declares the following:

(a) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.

(b) A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

SEC. 3. Section 811 is added to the Probate Code, to read:

811. Except where otherwise provided by law, including, but not limited to, Section 813 and the statutory and decisional law of testamentary capacity as in effect on January 1, 1995, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following:

(a) The rights, duties, and responsibilities created by or affected by the decision.

(b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision.

(c) The significant risks, benefits, and reasonable alternatives involved in the decision.

SEC. 4. Section 812 is added to the Probate Code, to read:

812. (a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to vote, or to execute wills or trusts, shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b):

(1) Alertness and attention, including, but not limited to, the following:

(A) Level of arousal or consciousness.

(B) Orientation to time, place, person, and situation.

(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:

(A) Short- and long-term memory, including immediate recall.

(B) Ability to understand or communicate with others, either verbally or otherwise.

(C) Recognition of familiar objects and familiar persons.

(D) Ability to understand and appreciate quantities.

(E) Ability to reason using abstract concepts.

(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.

(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking.

(B) Hallucinations.

(C) Delusions.

(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, which is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to

do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.

(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part shall affect the decisionmaking process set forth in Section 1418.8 of the Health and Safety Code, nor increase or decrease the burdens of documentation on, or potential liability of, physicians and surgeons who, outside the judicial context, determine the capacity of patients to make a medical decision.

SEC. 5. Section 813 is added to the Probate Code, to read:

813. A person has the capacity to give informed consent to a proposed medical treatment if the person is able to do all of the following:

(a) Respond knowingly and intelligently to queries about that medical treatment.

(b) Participate in that treatment decision by means of a rational thought process.

(c) Understand all of the following items of minimum basic medical treatment information with respect to that treatment:

(1) The nature and seriousness of the illness, disorder, or defect that the person has.

(2) The nature of the medical treatment that is being recommended by the person's health care providers.

(3) The probable degree and duration of any benefits and risks of any medical intervention that is being recommended by the person's health care providers, and the consequences of lack of treatment.

(4) The nature, risks, and benefits of any reasonable alternatives.

SEC. 6. Section 814 is added to the Probate Code, to read:

814. A person who has the capacity to give informed consent to a proposed medical treatment also has the capacity to refuse consent to that treatment.

SEC. 7. Section 1801 of the Probate Code is amended to read:

1801. Subject to Section 1800.3:

(a) A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter, except as provided for the person as described in subdivision (b) or (c) of Section 1828.5.

(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence, except as provided for that person as described in subdivision (b) or (c) of Section 1828.5. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).

(d) A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult. A limited conservatorship may be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations. The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives is the underlying mandate of this division in its application to adults alleged to be developmentally disabled.

(e) The standard of proof for the appointment of a conservator pursuant to this section shall be clear and convincing evidence.

SEC. 8. Section 1881 is added to the Probate Code, to read:

1881. (a) A conservatee shall be deemed unable to give informed consent to any form of medical treatment pursuant to Section 1880 if, for all medical treatments, the conservatee is unable to respond knowingly and intelligently to queries about medical treatment or is unable to participate in a treatment decision by means of a rational thought process.

(b) In order for a court to determine that a conservatee is unable to respond knowingly and intelligently to queries about his or her medical treatment or is unable to participate in treatment decisions by means of a rational thought process, a court shall do both of the following:

(1) Determine that, for all medical treatments, the conservatee is unable to understand at least one of the following items of minimum basic medical treatment information:

(A) The nature and seriousness of any illness, disorder, or defect that the conservatee has or may develop.

(B) The nature of any medical treatment that is being or may be recommended by the conservatee's health care providers.

(C) The probable degree and duration of any benefits and risks of any medical intervention that is being or may be recommended by the conservatee's health care providers, and the consequences of lack of treatment.

(D) The nature, risks, and benefits of any reasonable alternatives.

(2) Determine that one or more of the mental functions of the conservatee described in subdivision (a) of Section 812 is impaired

and that there is a link between the deficit or deficits and the conservatee's inability to give informed consent.

(c) A deficit in the mental functions listed in subdivision (a) of Section 812 may be considered only if the deficit by itself, or in combination with one or more other mental function deficits, significantly impairs the conservatee's ability to understand the consequences of his or her decisions regarding medical care.

(d) In determining whether a conservatee's mental functioning is so severely impaired that the conservatee lacks the capacity to give informed consent to any form of medical treatment, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(e) In the interest of minimizing unnecessary expense to the parties to a proceeding, paragraph (2) of subdivision (b) shall not apply to a petition pursuant to Section 1880 wherein the conservatee, after notice by the court of his or her right to object which, at least, shall include an interview by a court investigator pursuant to Section 1826 prior to the time at which the petition is filed, does not object to the proposed finding of incapacity, or waives any objections.

SEC. 9. Section 3201 of the Probate Code is amended to read:

3201. (a) A petition may be filed to determine that a patient has the capacity to give informed consent to a specified medical treatment for an existing or continuing medical condition.

(b) A petition may be filed to determine that a patient lacks the capacity to give informed consent to a specified medical treatment for an existing or continuing medical condition, and further for an order authorizing a designated person to give consent to such treatment on behalf of the patient.

(c) One proceeding may be brought under this part under both subdivisions (a) and (b).

(d) In determining whether a person's mental functioning is so severely impaired that the person lacks the capacity to give informed consent to any form of medical treatment, the court may take into consideration the frequency, severity and duration of periods of impairment.

(e) Nothing in this part shall supersede the right that any person may have under existing law to make medical decisions on behalf of a patient, or affect the decision making process of a long-term health care facility, as defined in subdivision (b) of Section 1418 of the Health and Safety Code.

(f) This chapter is permissive and cumulative for the relief to which it applies.

(g) Nothing in this part shall be construed to supersede or impair the right of any individual to choose treatment by spiritual means in lieu of medical treatment, nor shall any person choosing treatment by spiritual means, in accordance with the tenets and practices of that individual's established religious tradition, be required to submit to

medical testing of any kind pursuant to a determination of competency.

SEC. 10. Section 3204 of the Probate Code is amended to read:

3204. The petition shall state, or set forth by medical declaration attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(a) The nature of the medical condition of the patient which requires treatment.

(b) The recommended course of medical treatment which is considered to be medically appropriate.

(c) The threat to the health of the patient if authorization for the recommended course of treatment is delayed or denied by the court.

(d) The predictable or probable outcome of the recommended course of treatment.

(e) The medically available alternatives, if any, to the course of treatment recommended.

(f) The efforts made to obtain an informed consent from the patient.

(g) If the petition is filed by a person on behalf of a medical facility, the name of the person to be designated to give consent to the recommended course of treatment on behalf of the patient.

(h) The deficit or deficits in the patient's mental functions listed in subdivision (a) of Section 812 which are impaired, and identifying a link between the deficit or deficits and the patient's inability to respond knowingly and intelligently to queries about the recommended medical treatment or inability to participate in a treatment decision about the recommended medical treatment by means of a rational thought process.

SEC. 11. Section 3208 of the Probate Code is amended to read:

3208. (a) The court may make an order authorizing the recommended course of medical treatment of the patient and designating a person to give consent to the recommended course of medical treatment on behalf of the patient if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the patient requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the patient.

(3) The patient is unable to give an informed consent to the recommended course of treatment.

(b) If the patient has the capacity to give informed consent to the recommended course of medical treatment, the court shall so find in its order.

(c) If the court finds that the patient has the capacity to give informed consent to the recommended course of medical treatment, but that the patient refuses consent, the court shall not make an order authorizing the course of recommended medical treatment or

designating a person to give consent to such treatment. If an order has been made authorizing the recommended course of medical treatment and designating a person to give consent to that treatment, the order shall be revoked if the court determines that the patient has recovered the capacity to give informed consent to the recommended course of medical treatment. Until revoked or modified, the order is effective authorization for the course of medical treatment.

(d) In a proceeding under this part, where the court has determined that the patient has the capacity to give informed consent, the court shall, if requested, determine whether the patient has accepted or refused the recommended course of treatment, and whether a patient's consent to the recommended course of treatment is an informed consent.

SEC. 12. This act shall be known and may be cited as the Due Process in Competence Determinations Act.

SEC. 13. This act shall not apply to proceedings under the Welfare and Institutions Code.

CHAPTER 843

An act to add and repeal Chapter 1.5 (commencing with Section 1120) of Part 2 of Division 1 of the Insurance Code, relating to insurance, and making an appropriation therefor.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Chapter 1.5 (commencing with Section 1120) is added to Part 2 of Division 1 of the Insurance Code, to read:

CHAPTER 1.5. INTERSTATE INSURANCE RECEIVERSHIP COMPACT

1120. The Interstate Insurance Receivership Compact is hereby enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially contained in Section 1125.

1125. The full text of the Interstate Insurance Receivership Compact referred to in Section 1120 is as follows:

INTERSTATE INSURANCE RECEIVERSHIP COMPACT

Article I

Purposes

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

1. To promote, develop, and facilitate orderly, efficient, cost-effective, and uniform insurer receivership laws and operations.
2. To coordinate interaction between insurer receivership and guaranty association operations.
3. To create the Interstate Insurance Receivership Commission.
4. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance pursuant to the McCarran-Ferguson Act.

Article II

Definitions

For the purposes of this compact:

1. "Bylaws" means those bylaws prescribed by the commission for its governance, or for directing or controlling the commission's actions or conduct.
2. "Compacting state" means any state that has enacted enabling legislation for this compact.
3. "Commission" means the Interstate Insurance Receivership Commission established by this compact.
4. "Commissioner" means the chief insurance regulatory official of a state.
5. "Deputy receiver" means any person appointed or retained by a receiver and who is the receiver's duly authorized representative for administering one or more estates.
6. "Domiciliary state" means the state in which an insurer is incorporated or organized; or in the case of an alien insurer, its state of entry; or in the case of an unauthorized insurer not incorporated, organized, or entered in any state, a state where the insurer is engaged in or doing business.
7. "Estate" means the assets and liabilities of any insurer in receivership.
8. "Guaranty association" means an insurance guaranty fund or association or any similar entity now or hereafter created by statute in a compacting state, other than a receivership, to pay or assume, in whole or in part, the contractual claim obligations of insolvent insurers.
9. "Insurer" means any person or entity that has done, purports to do, is doing, or is licensed to do any insurance or reinsurance business,

or is or has been subject to the authority of, or to liquidation, rehabilitation, supervision, conservation, or ancillary receivership by, any commissioner.

10. "Member" means the commissioner of a compacting state or his or her designee, who shall be a person officially connected with the commissioner and who is wholly or principally employed by the commissioner.

11. "Noncompacting state" means any state that has not enacted enabling legislation for this compact.

12. "Operating procedures" means those procedures promulgated by the commission implementing a rule, an existing law in a compacting state, or a provision of this compact.

13. "Publication" means the act of publishing in the official state publication in a compacting state or in another publication as may be established by the commission.

14. "Receiver" means receiver, liquidator, rehabilitator, conservator, or ancillary receiver as the context requires.

15. "Receivership" means any liquidation, rehabilitation, conservation, or ancillary receivership proceeding as the context requires.

16. "Rules" means acts of the commission, duly promulgated pursuant to Article VII of this compact, substantially affecting interested parties in addition to the commission, which shall have the force and effect of law in the compacting states.

17. "State" means any state, district, or territory of the United States.

Article III

Establishment of the Commission and Venue

1. The compacting states hereby create and establish an entity known as the "Interstate Insurance Receivership Commission."

2. The commission is a body corporate of each compacting state.

3. The commission is a not-for-profit entity, separate and distinct from the compacting states.

4. The commission is solely responsible for its liabilities except as otherwise provided in this compact.

5. Except as otherwise specifically provided in state or federal law in the jurisdiction where the commission's principal office is located or where the commission is acting as receiver, venue is proper, and judicial proceedings by or against the commission shall be brought in a court of competent jurisdiction where the commission's principal office is located.

Article IV

Powers of the Commission

The commission shall have the following powers:

1. To promulgate rules, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

2. To promulgate operating procedures which shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise, and coordinate the activities of receivers in compacting states.

4. To act as receiver of insurers organized under the laws of, engaged in or doing the business of insurance in, a compacting state upon the request of the commissioner of the state or when grounds for receivership by the commission exist under Article IX of this compact.

5. To act as deputy receiver of insurers organized under the laws of, engaged in or doing the business of insurance in, a noncompacting state in accordance with Article IX of this compact.

6. To act as ancillary receiver in a compacting state of an insurer domiciled in a noncompacting state.

7. To monitor the activities and functions of guaranty associations in the compacting states.

8. To delegate its operating authority or functions; provided, that its rulemaking authority under Article VII of this compact shall not be delegated.

9. To bring or prosecute legal proceedings or actions in its name as the commission, or in the name of the commission acting as receiver.

10. To bring or prosecute legal proceedings or actions as receiver on behalf of an estate or its policyholders and creditors; provided, that any guaranty association's standing to sue or be sued under applicable law shall not be affected.

11. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

12. To establish and maintain offices.

13. To purchase and maintain insurance and bonds.

14. To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staff.

15. To elect or appoint such officers, attorneys, employees, or agents, and to fix their compensation, define their duties, and determine their qualifications; and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

16. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same.

17. To lease, purchase, accept gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed.

18. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

19. To enforce compliance with commission rules, operating procedures, and bylaws.

20. To provide for dispute resolution among compacting states and receivers.

21. To represent and advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact.

22. To provide advice and training to receivership personnel of compacting states, and to be a resource for compacting states by maintaining a reference library of relevant materials.

23. To establish a budget and make expenditures.

24. To borrow money.

25. To appoint committees, including, but not limited to, an industry advisory committee and an executive committee of members.

26. To provide and receive information relating to receiverships and guaranty associations, and to cooperate with law enforcement agencies.

27. To adopt and use a corporate seal.

28. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact as may be consistent with the state regulation of the business of insurance pursuant to the McCarran-Ferguson Act.

Article V

Organization of the Commission

Section A. Membership, Voting, and Bylaws

1. Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity under or pursuant to the applicable law of the compacting state. Each compacting state retains the discretionary right to determine the due election or appointment and qualification of its own commissioner, and to fill all vacancies of its members.

2. Each member shall be entitled to one vote.

3. The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the commission.

b. Providing reasonable standards and procedures: (i) for the establishment of committees, and (ii) governing any general or specific delegation of any authority or function of the commission.

c. Providing reasonable procedures for calling and conducting meetings of the commission, and ensuring reasonable notice of each such meeting.

d. Establishing the titles and responsibilities of the officers of the commission.

e. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

f. Providing a mechanism for winding up the operations of the commission and the equitable return of any surplus funds that may exist after the dissolution of the compact after the payment or reserving of all of its debts and obligations.

Section B. Officers and Personnel

1. The commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, a member designated in accordance with the bylaws, shall preside at all meetings of the commission. The officers so elected shall serve without compensation or remuneration from the commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the commission.

2. The commission may, by a majority of the members, appoint or retain an executive director for the period, upon those terms and conditions, and for the compensation that the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

Section C. Corporate Records of the Commission

The commission shall maintain its corporate books and records in accordance with the bylaws.

Section D. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, and employees of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person, or to protect the commission acting as receiver under Article IX of this compact.

2. The commission shall defend any commissioner of a compacting state, or his or her representatives or employees, or the commission's representatives or employees, in any civil action seeking to impose liability, arising out of or relating to any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

3. The commission shall indemnify and hold the commissioner of a compacting state, or his or her representatives or employees, or the commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such person arising out of or relating to any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

4. The costs and expenses of defense and indemnification of the commission acting as receiver of an estate shall be paid as administrative expenses from the assets of that estate unless the costs and expenses are covered by insurance maintained by the commission.

Article VI

Meetings and Acts of the Commission

1. The commission shall meet and take such actions as are consistent with the provisions of this compact.

2. Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the commission, such act shall have been taken at a meeting

of the commission and shall have received an affirmative vote of a majority of the members.

3. Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person and shall not delegate his or her vote to another member. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication.

4. The commission shall meet at least once during each calendar year. The chairperson of the commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

5. The commission's rules shall establish conditions and procedures under which the commission shall make its information and official records available to the public for inspection or copying. The commission may exempt from disclosure any information or official records to the extent disclosure would adversely affect personal privacy rights or proprietary interests. In promulgating the rules, the commission may consider any special circumstances pertaining to insurer insolvencies, but shall be guided by the principles embodied in state and federal freedom of information laws. The commission may promulgate additional rules under which it may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

6. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in this compact. The commission shall promulgate rules consistent with the principles contained in the Government in the Sunshine Act (5 U.S.C. Sec. 552b), as may be amended. The commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

a. Relate solely to the commission's internal personnel practices and procedures.

b. Disclose matters specifically exempted from disclosure by statute.

c. Disclose trade secrets or commercial or financial information which is privileged or confidential.

d. Involve accusing any person of a crime, or formally censuring any person.

e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

f. Disclose investigatory records compiled for law enforcement purposes.

g. Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the commission with respect to a regulated entity for the purpose of regulation or supervision of such entity.

h. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated entity.

i. Specifically relate to the commission's issuance of a subpoena, or its participation in a civil action or proceeding.

7. For every meeting closed pursuant to this provision, the commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

Article VII

Rulemaking Functions of the Commission

1. The commission shall promulgate rules and operating procedures in order to effectively and efficiently achieve the purposes of this compact; provided, that the commission shall not promulgate any rules: (i) directly relating to guaranty associations, including, but not limited to, rules governing coverage, funding, or assessment mechanisms; or (ii) (except pursuant to rules promulgated under Article VII(3) of this compact) altering the statutory priorities for distributing assets out of an estate.

2. Rulemaking shall occur pursuant to the criteria set forth in this article and the rules and operating procedures promulgated pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act (5 U.S.C. Sec. 551 et seq.) and the Federal Advisory Committee Act (5 U.S.C. App. 2, Sec. 1 et seq.), as may be amended.

3. Other than the promulgation of such rules as are necessary for the orderly operation of the commission, the first rule to be considered by the commission shall be uniform provisions governing insurer receiverships, including, but not limited to, provisions requiring compacting states to implement, execute, and administer in a fair, just, effective, and efficient manner rules and operating procedures relating to receiverships. The commission shall, within three years of the adoption of this compact by two or more states, promulgate such uniform provisions through the rulemaking process. Such uniform provisions shall become law in all of the

compacting states upon legislative enactment in a majority of the compacting states.

4. All rules and amendments shall become binding as of the date specified in each rule or amendment; provided, that if a compacting state expressly rejects such rule or amendment through legislative enactment as of the expiration of the second full calendar year after such rule is promulgated, such rule or amendment shall have no further force or effect in the rejecting compacting state. If a majority of compacting states reject a rule, then such rule shall have no further force or effect in any compacting state.

5. When promulgating a rule or operating procedure, the commission shall: (a) effect publication of the proposed rulemaking, stating with particularity the text of the rule or operating procedure which is proposed and the reason for the proposed rule or operating procedure; (b) allow persons to submit written data, facts, opinions, and arguments, which information the commission shall make publicly available; (c) provide an opportunity for an informal hearing; and (d) promulgate a final rule or operating procedure and its effective date, if appropriate, based on the rulemaking record.

6. Not later than 60 days after a rule or operating procedure is promulgated, any interested person may file a petition in a court of competent jurisdiction where the commission's principal office is located for judicial review of such rule or operating procedure. If the court finds that the commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside.

Article VIII

Oversight and Dispute Resolution by the Commission

Section A. Oversight

1. The commission shall oversee the administration and operations of receiverships in compacting states, and shall monitor receiverships being administered in noncompacting states that may significantly affect compacting states.

2. To aid its monitoring, oversight, and coordination responsibilities, the commission shall establish operating procedures requiring each member to submit written reports to the commission as follows:

a. An initial report to the commission upon a finding or other official action by the compacting state that grounds exist for receivership of an insurer doing business in more than one state. Thereafter, reports shall be submitted periodically and as otherwise required pursuant to the commission's operating procedures. The

commission shall be entitled to receive notice of, and shall have standing to appear in, compacting states' receiverships.

b. An initial report of the status of an insurer within a reasonable time after the initiation of a receivership.

3. The commission shall promulgate operating procedures requiring receivers to submit to the commission periodic written reports and such additional information and documentation as the commission may reasonably request. Each compacting state's receivers shall establish the capability to obtain and provide all records, data, and information required by the commission in accordance with the commission's operating procedures.

4. Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the responsibility to disclose any relevant records, data, or information to the commission; provided, that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that the commission shall be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to all such records, data, and information in its possession.

5. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any receivership or other judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the commission, the commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the receivership or proceeding for all purposes.

6. The commission shall analyze and correlate records, data, information, and reports received from receivers and guaranty associations, and shall make recommendations for improving their performance to the compacting states. The commission shall include summary information and data regarding its oversight functions in its annual report.

Section B. Dispute Resolution

1. The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and that may arise among compacting states and noncompacting states.

2. The compacting states shall report to the commission on issues or activities of concern to them, and cooperate with and support the commission in the discharge of its duties and responsibilities.

3. The commission shall promulgate an operating procedure providing for binding dispute resolution for disputes among receivers.

4. The commission shall facilitate voluntary dispute resolution for disputes among guaranty associations and receivers.

Article IX

Receivership Functions of the Commission

1. The commission has authority to act as receiver of any insurer domiciled, engaged in, or doing business in a compacting state upon the request of the commissioner of that compacting state, or as otherwise provided in this compact.

a. The commission as receiver shall have all powers and duties pursuant to the receivership laws of the domiciliary state.

b. The commission shall maintain accounts of receipts and disbursements of the estates for which it is acting as receiver, consistent with the accounting practices and procedures set forth in the bylaws.

c. The commission shall cause an annual audit of each estate for which it is acting as receiver to be conducted by an independent certified public accountant. The costs and expenses of such audit shall be paid as administrative expenses from the assets of the estate. The commission shall not cause an annual audit to be conducted of any estate that lacks sufficient assets to conduct the audit.

d. The commission as receiver is authorized to delegate its receivership duties and functions, and to effectuate such delegation through contracts with others.

2. The commission shall act as receiver of any insurer domiciled or doing business in a compacting state in the event that the member acting as receiver in that compacting state fails to comply with duly promulgated commission rules or operating procedures. The commission shall notify the member in writing of his or her noncompliance with commission rules or operating procedures. If the member acting as receiver fails to remedy the noncompliance within 10 days after receipt of such notification, the commission may petition the supervising court before which the receivership is pending for an order substituting and appointing the commission as receiver of the estate.

3. The commission shall not act as receiver of an estate that appears to lack sufficient assets to fund the receivership unless the compacting state makes provisions for the payment of the estate's administrative expenses satisfactory to the commission.

4. The commission may act as deputy receiver for any insurer domiciled or doing business in a noncompacting state in accordance with such state's laws, upon request of that noncompacting state's commissioner and approval of the commission.

5. With respect to receiverships pending in a compacting state on the effective date of the enactment of this compact by the compacting state:

a. The commission may act as receiver of an insurer upon the request of that compacting state's member and approval of the commission.

b. The commission shall oversee, monitor, and coordinate the activities of all receiverships pending in that compacting state regardless of whether the commission is acting as receiver of estates in that state.

Article X

Finance

1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization.

2. Except as otherwise provided in this compact or by act of the commission, the costs and expenses of each compacting state shall be the sole and exclusive responsibility of the respective compacting state. The commission may pay or provide for actual and necessary costs and expenses for attendance of its members at official meetings of the commission or its designated committees.

3. The commission shall levy on and collect an annual assessment from each compacting state and each insurer authorized to do business in a compacting state, and writing direct insurance, to cover the cost of the internal operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

a. The aggregate annual assessment amount shall be allocated 75 percent to insurers and 25 percent to compacting states. The insurers' portion shall be allocated to each insurer by the percentage derived from a fraction, the numerator of which shall be the gross direct written premium received on that insurer's business in all compacting states and the denominator of which shall be the gross direct written premium received by all insurers on business in all compacting states. The compacting states' portion shall be allocated to each compacting state by the percentage derived from a fraction, the numerator of which shall be the gross direct written premium received by all insurers on business in that compacting state and the denominator shall be the gross direct written premium received on all insurers on business in all compacting states. Each compacting state's portion shall be funded as designated by that state's legislature. In no event shall an insurer's assessment be less than fifty dollars ($50) or more than twenty-five thousand dollars ($25,000); provided, that affiliated insurers' combined assessments shall not exceed fifty thousand dollars ($50,000). Upon the request of an insurer, the

commission may exempt or defer the assessment of any insurer, if such assessment would cause the insurer's financial impairment.

b. These assessments shall not be used to pay any costs or expenses incurred by the commission and its staff acting as receiver of estates. Such costs and expenses shall be paid as administrative expenses from the assets of the estates as provided by law, except as otherwise provided in this compact.

c. Each insurer authorized to do business in a compacting state shall timely pay assessments to the commission. Failure to pay such assessments shall not be grounds for the revocation, suspension, or denial of an insurer's authority to do business, but shall subject the insurer to suit by the commission for recovery of any assessment due, attorney's fees and costs, together with interest from the date the assessment is due at a rate of 10 percent per annum, and to civil forfeiture in an amount to be determined by the commissioner of that compacting state in which the insurer received the greatest premium in the year next preceding the first year for which the insurer shall be delinquent in payment of assessments.

4. The commission shall be reimbursed in the following manner for the costs and expenses incurred by the commission and its staff acting as receiver of estates to the extent that an insurer's assets may be insufficient for the effective administration of its estate:

a. If the insurer is domiciled in a compacting state, the estate shall be closed unless that compacting state makes provisions for reimbursing the commission.

b. If the insurer is unauthorized to do business in a compacting state or if the insurer is domiciled in a noncompacting state and subject to ancillary receivership, then the commission and such state shall make provisions for reimbursing the commission prior to the commission becoming receiver of such insurer.

5. To fund the cost of the initial operations of the commission until its first annual budget is adopted and related assessments have been made, contributions from compacting states and others may be accepted and a one-time assessment on insurers doing a direct insurance business in the compacting states may be made not to exceed four hundred fifty dollars ($450) per insurer.

6. The commission's adopted budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this compact. The budget shall determine the amount of the annual assessment. The commission may accumulate a net worth not to exceed 30 percent of its then annual cost of operation to provide for contingencies and events not contemplated. These accumulated funds shall be held separately and shall not be used for any other purpose. The commission's budget may include a provision for a contribution to the commission's net worth.

7. The commission shall be exempt from all taxation in and by the compacting states.

8. The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

9. The commission shall keep complete and accurate accounts of all its internal receipts (including grants and donations) and disbursements of all funds, other than receivership assets, under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of such independent auditor shall include a management and performance audit of the commission. The report of such independent audit shall be made available to the public and shall be included in and become part of the annual report of the commission to the governors and legislatures of the compacting states. The commission's internal accounts, any workpapers related to any internal audit and any workpapers related to the independent audit, shall be confidential; provided, that such materials shall be made available: (i) in compliance with the order of any court of competent jurisdiction; (ii) pursuant to such reasonable rules as the commission shall promulgate; and (iii) to any commissioner, governor of a compacting state, or their duly authorized representatives.

10. No compacting state shall have any claim to or ownership of any property held by or vested in the commission or the commission acting as receiver or to any other commission funds held pursuant to the provisions of this compact.

Article XI

Compacting States, Effective Date, and Amendment

1. Any state is eligible to become a compacting state.

2. The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XII

Withdrawal, Default, and Termination

Section A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal; provided, that the repeal shall not apply to any receiverships, for which the commission is acting as receiver, pending on the date of the repeal except by mutual agreement of the commission and the withdrawing state.

3. The withdrawing state shall immediately notify the chairperson of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.

4. The commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

5. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. Notwithstanding the foregoing, the withdrawing state is responsible for the costs and expenses of its estates subject to this compact pending on the date of repeal; the commission and the other estates subject to this compact shall not bear any costs and expenses related to the withdrawing state's estates unless otherwise mutually agreed upon between the commission and the withdrawing state.

6. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the commission.

Section B. Default

1. If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules, all rights, privileges, and benefits conferred by this compact, and any agreements entered into pursuant to this compact shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to,

failure of a compacting state to perform such obligations or responsibilities and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within 60 days of the effective date of termination of a defaulting state, the commission shall notify the governor and the majority and minority leaders of the defaulting state's legislature of such termination.

3. The termination of a defaulting state shall apply to all receiverships for which the commission is acting as receiver, pending on the effective date of termination except by mutual agreement of the commission and the defaulting state.

4. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, and is responsible for the costs and expenses relating to its estates subject to this compact pending on the date of the termination. The commission and the other estates subject to this compact shall not bear any costs or expenses relating to the defaulting state's estates unless otherwise mutually agreed upon between the commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the commission pursuant to the rules.

Section C. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or the termination by default of the compacting state which reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

Article XIII

Severability and Construction

1. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

2. The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XIV

Binding Effect of Compact and Other Laws

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of this Compact

1. All lawful actions of the commission, including all rules and operating procedures promulgated by the commission, are binding upon the compacting states.

2. All agreements between the commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

1130. (a) For purposes of paying the aggregate annual assessment required by paragraph 3 of Article X of the Interstate Insurance Receivership Compact established by Section 1125, the Interstate Compact Contribution Fund and the Interstate Compact Insurer Fund are created in the state treasury.

(b) For purposes of the state's share of the assessment, the commissioner shall solicit voluntary contributions from admitted

insurers. All contributions received for the purpose of meeting the state's share of the assessment shall be deposited by the commissioner into the Interstate Compact Contribution Fund. Excess contributions, if any, received by the commissioner shall be separately held in the fund by the commissioner until the next assessment is due.

(c) For purposes of the insurers' portion of the assessment, the commissioner shall receive directly from each assessed insurer the payment of each assessment and temporarily deposit that assessment into the Interstate Compact Insurer Fund.

(d) Except as provided in subdivision (e), the commissioner shall transmit to the commission, when due, and up to the amount due, all monies held in the Interstate Compact Contribution Fund and the Interstate Compact Insurer Fund.

(e) If insufficient contributions are available in any year to pay the state's share of the assessment, or if the commissioner, after conducting a public hearing, adopts a written finding that the state should no longer participate in the interstate compact because its rules, operating procedures, or official actions work to the disadvantage of California policyholders, the commissioner shall not transmit to the commission any of the funds deposited in the Interstate Compact Contribution Fund or the Interstate Compact Insurer Fund. Instead, the commissioner shall immediately notify the chairperson or executive director of the commission that the state will not meet its funding obligations. The commissioner shall also, at the time he or she provides the notification, request that the commission immediately proceed to suspend or terminate the state's membership in the compact under Section 8 of Article XII of the Compact.

(f) If the commissioner, pursuant to subdivision (e), requests the commission to suspend and terminate the state's membership, he or she shall immediately refund all monies held in both the Interstate Compact Contribution Fund and the Interstate Compact Insurer Fund to those that made the voluntary contributions, assessments, or both.

1132. For purposes of subparagraph (a) of Section 1 of Article IX of the Interstate Insurance Receivership Compact established by Section 1125, "receivership laws" when referring to the laws of the State of California, means those laws included within Article 14 (commencing with Section 1010) of, and Article 14.3 (commencing with Section 1064.1) of, Chapter 1 of Part 2 of Division 1.

1134. Nothing in this chapter is intended to reduce, modify, or limit the scope of Section 1010 as that section operates to provide the basic jurisdiction of the commissioner to initiate conservation proceedings pursuant to Article 14 (commencing with Section 1010) of, and Article 14.3 (commencing with Section 1064.1) of, Chapter 1 of Part 2 of Division 1 and to issue stop orders pursuant to Article 14.5

(commencing with Section 1065.1) of Chapter 1 of Part 2 of Division 1.

1135. The Legislature finds and declares that, in a number of states, title insurance is not regulated in the same manner as are other classes of insurance. Accordingly, in some states title insurers are likely to be exempt from the provisions of the Interstate Insurance Receivership Compact although subject to the compact's scope in other states. In order to rectify this inequity, the Legislature interprets "insurer," as defined in paragraph 9 of Article II of the Interstate Insurance Receivership Compact established by Section 1125, to specifically exclude California title insurers.

1136. This chapter shall remain in effect until December 31, 1997, and as of that date is repealed.

SEC. 2. Chapter 1.5 (commencing with Section 1120) is added to Part 2 of Division 1 of the Insurance Code, to read:

CHAPTER 1.5. INTERSTATE LIFE AND HEALTH INSURANCE RECEIVERSHIP COMPACT

1120. The Interstate Life and Health Insurance Receivership Compact is hereby enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially contained in Section 1125.

1125. The full text of the Interstate Life and Health Insurance Receivership Compact referred to in Section 1120 is as follows:

INTERSTATE LIFE AND HEALTH INSURANCE RECEIVERSHIP COMPACT

Article I

Purposes

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

1. To promote, develop, and facilitate orderly, efficient, cost-effective, and uniform insurer receivership laws and operations.
2. To coordinate interaction between insurer receivership and guaranty association operations.
3. To create the Interstate Life and Health Insurance Receivership Commission.
4. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance pursuant to the McCarran-Ferguson Act.

Article II

Definitions

For the purposes of this compact:

1. "Bylaws" means those bylaws prescribed by the commission for its governance, or for directing or controlling the commission's actions or conduct.

2. "Compacting state" means any state that has enacted enabling legislation for this compact.

3. "Commission" means the Interstate Life and Health Insurance Receivership Commission established by this compact.

4. "Commissioner" means the chief insurance regulatory official of a state.

5. "Deputy receiver" means any person appointed or retained by a receiver and who is the receiver's duly authorized representative for administering one or more estates.

6. "Domiciliary state" means the state in which an insurer is incorporated or organized; or in the case of an alien insurer, its state of entry; or in the case of an unauthorized insurer not incorporated, organized, or entered in any state, a state where the insurer is engaged in or doing business.

7. "Estate" means the assets and liabilities of any insurer in receivership.

8. "Guaranty association" means an insurance guaranty fund or association or any similar entity now or hereafter created by statute in a compacting state, other than a receivership, to pay or assume, in whole or in part, the contractual claim obligations of insolvent insurers.

9. "Insurer" means any person or entity that has done, purports to do, is doing, or is licensed to do any life, health, or disability insurance or reinsurance business, or is or has been an entity conducting the business of life, health, or disability insurance which is or has been subject to the authority of, or to liquidation, rehabilitation, supervision, conservation, or ancillary receivership by, any commissioner.

10. "Member" means the commissioner of a compacting state or his or her designee, who shall be a person officially connected with the commissioner and who is wholly or principally employed by the commissioner.

11. "Noncompacting state" means any state that has not enacted enabling legislation for this compact.

12. "Operating procedures" means those procedures promulgated by the commission implementing a rule, an existing law in a compacting state, or a provision of this compact.

13. "Publication" means the act of publishing in the official state publication in a compacting state or in another publication as may be established by the commission.

14. "Receiver" means receiver, liquidator, rehabilitator, conservator, or ancillary receiver as the context requires.

15. "Receivership" means any liquidation, rehabilitation, conservation, or ancillary receivership proceeding as the context requires.

16. "Rules" means acts of the commission, duly promulgated pursuant to Article VII of this compact, substantially affecting interested parties in addition to the commission, which shall have the force and effect of law in the compacting states.

17. "State" means any state, district, or territory of the United States.

Article III

Establishment of the Commission and Venue

1. The compacting states hereby create and establish an entity known as the "Interstate Life and Health Insurance Receivership Commission."

2. The commission is a body corporate of each compacting state.

3. The commission is a not-for-profit entity, separate and distinct from the compacting states.

4. The commission is solely responsible for its liabilities except as otherwise provided in this compact.

5. Except as otherwise specifically provided in state or federal law in the jurisdiction where the commission's principal office is located or where the commission is acting as receiver, venue is proper, and judicial proceedings by or against the commission shall be brought in a court of competent jurisdiction where the commission's principal office is located.

Article IV

Powers of the Commission

The commission shall have the following powers:

1. To promulgate rules, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

2. To promulgate operating procedures which shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise, and coordinate the activities of receivers in compacting states.

4. To act as receiver of insurers organized under the laws of, engaged in or doing the business of insurance in, a compacting state upon the request of the commissioner of the state or when grounds

for receivership by the commission exist under Article IX of this compact.

5. To act as deputy receiver of insurers organized under the laws of, engaged in or doing the business of insurance in, a noncompacting state in accordance with Article IX of this compact.

6. To act as ancillary receiver in a compacting state of an insurer domiciled in a noncompacting state.

7. To monitor the activities and functions of guaranty associations in the compacting states.

8. To delegate its operating authority or functions; provided, that its rulemaking authority under Article VII of this compact shall not be delegated.

9. To bring or prosecute legal proceedings or actions in its name as the commission, or in the name of the commission acting as receiver.

10. To bring or prosecute legal proceedings or actions as receiver on behalf of an estate or its policyholders and creditors; provided, that any guaranty association's standing to sue or be sued under applicable law shall not be affected.

11. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

12. To establish and maintain offices.

13. To purchase and maintain insurance and bonds.

14. To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staff.

15. To elect or appoint such officers, attorneys, employees, or agents, and to fix their compensation, define their duties, and determine their qualifications; and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

16. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same.

17. To lease, purchase, accept gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed.

18. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

19. To enforce compliance with commission rules, operating procedures, and bylaws.

20. To provide for dispute resolution among compacting states and receivers.

21. To represent and advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact.

22. To provide advice and training to receivership personnel of compacting states, and to be a resource for compacting states by maintaining a reference library of relevant materials.

23. To establish a budget and make expenditures.

24. To borrow money.

25. To appoint committees, including, but not limited to, an industry advisory committee and an executive committee of members.

26. To provide and receive information relating to receiverships and guaranty associations, and to cooperate with law enforcement agencies.

27. To adopt and use a corporate seal.

28. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact as may be consistent with the state regulation of the business of insurance pursuant to the McCarran-Ferguson Act.

Article V

Organization of the Commission

Section A. Membership, Voting, and Bylaws

1. Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity under or pursuant to the applicable law of the compacting state. Each compacting state retains the discretionary right to determine the due election or appointment and qualification of its own commissioner, and to fill all vacancies of its members.

2. Each member shall be entitled to one vote.

3. The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the commission.

b. Providing reasonable standards and procedures: (i) for the establishment of committees, and (ii) governing any general or specific delegation of any authority or function of the commission.

c. Providing reasonable procedures for calling and conducting meetings of the commission, and ensuring reasonable notice of each such meeting.

d. Establishing the titles and responsibilities of the officers of the commission.

e. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

f. Providing a mechanism for winding up the operations of the commission and the equitable return of any surplus funds that may exist after the dissolution of the compact after the payment or

reserving of all of its debts and obligations.

Section B. Officers and Personnel

1. The commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, a member designated in accordance with the bylaws, shall preside at all meetings of the commission. The officers so elected shall serve without compensation or remuneration from the commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the commission.

2. The commission may, by a majority of the members, appoint or retain an executive director for the period, upon those terms and conditions, and for the compensation that the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

Section C. Corporate Records of the Commission

The commission shall maintain its corporate books and records in accordance with the bylaws.

Section D. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, and employees of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person, or to protect the commission acting as receiver under Article IX of this compact.

2. The commission shall defend any commissioner of a compacting state, or his or her representatives or employees, or the commission's representatives or employees, in any civil action seeking to impose liability, arising out of or relating to any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a

reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

3. The commission shall indemnify and hold the commissioner of a compacting state, or his or her representatives or employees, or the commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such person arising out of or relating to any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

4. The costs and expenses of defense and indemnification of the commission acting as receiver of an estate shall be paid as administrative expenses from the assets of that estate unless the costs and expenses are covered by insurance maintained by the commission.

Article VI

Meetings and Acts of the Commission

1. The commission shall meet and take such actions as are consistent with the provisions of this compact.

2. Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the commission, such act shall have been taken at a meeting of the commission and shall have received an affirmative vote of a majority of the members.

3. Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person and shall not delegate his or her vote to another member. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication.

4. The commission shall meet at least once during each calendar year. The chairperson of the commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

5. The commission's rules shall establish conditions and procedures under which the commission shall make its information and official records available to the public for inspection or copying. The commission may exempt from disclosure any information or official records to the extent disclosure would adversely affect personal privacy rights or proprietary interests. In promulgating the

rules, the commission may consider any special circumstances pertaining to insurer insolvencies, but shall be guided by the principles embodied in state and federal freedom of information laws. The commission may promulgate additional rules under which it may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

6. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in this compact. The commission shall promulgate rules consistent with the principles contained in the Government in the Sunshine Act (5 U.S.C. Sec. 552b), as may be amended. The commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

a. Relate solely to the commission's internal personnel practices and procedures.

b. Disclose matters specifically exempted from disclosure by statute.

c. Disclose trade secrets or commercial or financial information which is privileged or confidential.

d. Involve accusing any person of a crime, or formally censuring any person.

e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

f. Disclose investigatory records compiled for law enforcement purposes.

g. Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the commission with respect to a regulated entity for the purpose of regulation or supervision of such entity.

h. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated entity.

i. Specifically relate to the commission's issuance of a subpoena, or its participation in a civil action or proceeding.

7. For every meeting closed pursuant to this provision, the commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

Article VII

Rulemaking Functions of the Commission

1. The commission shall promulgate rules and operating procedures in order to effectively and efficiently achieve the purposes of this compact; provided, that the commission shall not promulgate any rules: (i) directly relating to guaranty associations, including, but not limited to, rules governing coverage, funding, or assessment mechanisms; or (ii) (except pursuant to rules promulgated under Article VII(3) of this compact) altering the statutory priorities for distributing assets out of an estate.

2. Rulemaking shall occur pursuant to the criteria set forth in this article and the rules and operating procedures promulgated pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act (5 U.S.C. Sec. 551 et seq.) and the Federal Advisory Committee Act (5 U.S.C. App. 2, Sec. 1 et seq.), as may be amended.

3. Other than the promulgation of such rules as are necessary for the orderly operation of the commission, the first rule to be considered by the commission shall be uniform provisions governing insurer receiverships, including, but not limited to, provisions requiring compacting states to implement, execute, and administer in a fair, just, effective, and efficient manner rules and operating procedures relating to receiverships. The commission shall, within three years of the adoption of this compact by two or more states, promulgate such uniform provisions through the rulemaking process. Such uniform provisions shall become law in all of the compacting states upon legislative enactment in a majority of the compacting states.

4. All rules and amendments shall become binding as of the date specified in each rule or amendment; provided, that if a compacting state expressly rejects such rule or amendment through legislative enactment as of the expiration of the second full calendar year after such rule is promulgated, such rule or amendment shall have no further force or effect in the rejecting compacting state. If a majority of compacting states reject a rule, then such rule shall have no further force or effect in any compacting state.

5. When promulgating a rule or operating procedure, the commission shall: (a) effect publication of the proposed rulemaking, stating with particularity the text of the rule or operating procedure which is proposed and the reason for the proposed rule or operating procedure; (b) allow persons to submit written data, facts, opinions, and arguments, which information the commission shall make publicly available; (c) provide an opportunity for an informal hearing; and (d) promulgate a final rule or operating procedure and its effective date, if appropriate, based on the rulemaking record.

6. Not later than 60 days after a rule or operating procedure is promulgated, any interested person may file a petition in a court of competent jurisdiction where the commission's principal office is located for judicial review of such rule or operating procedure. If the court finds that the commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside.

Article VIII

Oversight and Dispute Resolution by the Commission

Section A. Oversight

1. The commission shall oversee the administration and operations of receiverships in compacting states, and shall monitor receiverships being administered in noncompacting states that may significantly affect compacting states.

2. To aid its monitoring, oversight, and coordination responsibilities, the commission shall establish operating procedures requiring each member to submit written reports to the commission as follows:

a. An initial report to the commission upon a finding or other official action by the compacting state that grounds exist for receivership of an insurer doing business in more than one state. Thereafter, reports shall be submitted periodically and as otherwise required pursuant to the commission's operating procedures. The commission shall be entitled to receive notice of, and shall have standing to appear in, compacting states' receiverships.

b. An initial report of the status of an insurer within a reasonable time after the initiation of a receivership.

3. The commission shall promulgate operating procedures requiring receivers to submit to the commission periodic written reports and such additional information and documentation as the commission may reasonably request. Each compacting state's receivers shall establish the capability to obtain and provide all records, data, and information required by the commission in accordance with the commission's operating procedures.

4. Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the responsibility to disclose any relevant records, data, or information to the commission; provided, that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that the commission shall be subject to the compacting state's laws pertaining

to confidentiality and nondisclosure with respect to all such records, data, and information in its possession.

5. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any receivership or other judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the commission, the commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the receivership or proceeding for all purposes.

6. The commission shall analyze and correlate records, data, information, and reports received from receivers and guaranty associations, and shall make recommendations for improving their performance to the compacting states. The commission shall include summary information and data regarding its oversight functions in its annual report.

Section B. Dispute Resolution

1. The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and that may arise among compacting states and noncompacting states.

2. The compacting states shall report to the commission on issues or activities of concern to them, and cooperate with and support the commission in the discharge of its duties and responsibilities.

3. The commission shall promulgate an operating procedure providing for binding dispute resolution for disputes among receivers.

4. The commission shall facilitate voluntary dispute resolution for disputes among guaranty associations and receivers.

Article IX

Receivership Functions of the Commission

1. The commission has authority to act as receiver of any insurer domiciled, engaged in, or doing business in a compacting state upon the request of the commissioner of that compacting state, or as otherwise provided in this compact.

a. The commission as receiver shall have all powers and duties pursuant to the receivership laws of the domiciliary state.

b. The commission shall maintain accounts of receipts and disbursements of the estates for which it is acting as receiver, consistent with the accounting practices and procedures set forth in the bylaws.

c. The commission shall cause an annual audit of each estate for which it is acting as receiver to be conducted by an independent certified public accountant. The costs and expenses of such audit shall be paid as administrative expenses from the assets of the estate. The commission shall not cause an annual audit to be conducted of any estate that lacks sufficient assets to conduct the audit.

d. The commission as receiver is authorized to delegate its receivership duties and functions, and to effectuate such delegation through contracts with others.

2. The commission shall act as receiver of any insurer domiciled or doing business in a compacting state in the event that the member acting as receiver in that compacting state fails to comply with duly promulgated commission rules or operating procedures. The commission shall notify the member in writing of his or her noncompliance with commission rules or operating procedures. If the member acting as receiver fails to remedy the noncompliance within 10 days after receipt of such notification, the commission may petition the supervising court before which the receivership is pending for an order substituting and appointing the commission as receiver of the estate.

3. The commission shall not act as receiver of an estate that appears to lack sufficient assets to fund the receivership unless the compacting state makes provisions for the payment of the estate's administrative expenses satisfactory to the commission.

4. The commission may act as deputy receiver for any insurer domiciled or doing business in a noncompacting state in accordance with such state's laws, upon request of that noncompacting state's commissioner and approval of the commission.

5. With respect to receiverships pending in a compacting state on the effective date of the enactment of this compact by the compacting state:

a. The commission may act as receiver of an insurer upon the request of that compacting state's member and approval of the commission.

b. The commission shall oversee, monitor, and coordinate the activities of all receiverships pending in that compacting state regardless of whether the commission is acting as receiver of estates in that state.

Article X

Finance

1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization.

2. Except as otherwise provided in this compact or by act of the commission, the costs and expenses of each compacting state shall be the sole and exclusive responsibility of the respective compacting

state. The commission may pay or provide for actual and necessary costs and expenses for attendance of its members at official meetings of the commission or its designated committees.

3. The commission shall levy on and collect an annual assessment from each compacting state and each insurer authorized to do business in a compacting state, and writing direct insurance, to cover the cost of the internal operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

a. The aggregate annual assessment amount shall be allocated 75 percent to insurers and 25 percent to compacting states. The insurers' portion shall be allocated to each insurer by the percentage derived from a fraction, the numerator of which shall be the gross direct written premium received on that insurer's business in all compacting states and the denominator of which shall be the gross direct written premium received by all insurers on business in all compacting states. The compacting states' portion shall be allocated to each compacting state by the percentage derived from a fraction, the numerator of which shall be the gross direct written premium received by all insurers on business in that compacting state and the denominator shall be the gross direct written premium received on all insurers on business in all compacting states. Each compacting state's portion shall be funded as designated by that state's legislature. In no event shall an insurer's assessment be less than fifty dollars ($50) or more than twenty-five thousand dollars ($25,000); provided, that affiliated insurers' combined assessments shall not exceed fifty thousand dollars ($50,000). Upon the request of an insurer, the commission may exempt or defer the assessment of any insurer, if such assessment would cause the insurer's financial impairment.

b. These assessments shall not be used to pay any costs or expenses incurred by the commission and its staff acting as receiver of estates. Such costs and expenses shall be paid as administrative expenses from the assets of the estates as provided by law, except as otherwise provided in this compact.

c. Each insurer authorized to do business in a compacting state shall timely pay assessments to the commission. Failure to pay such assessments shall not be grounds for the revocation, suspension, or denial of an insurer's authority to do business, but shall subject the insurer to suit by the commission for recovery of any assessment due, attorney's fees and costs, together with interest from the date the assessment is due at a rate of 10 percent per annum, and to civil forfeiture in an amount to be determined by the commissioner of that compacting state in which the insurer received the greatest premium in the year next preceding the first year for which the insurer shall be delinquent in payment of assessments.

4. The commission shall be reimbursed in the following manner for the costs and expenses incurred by the commission and its staff

acting as receiver of estates to the extent that an insurer's assets may be insufficient for the effective administration of its estate:

a. If the insurer is domiciled in a compacting state, the estate shall be closed unless that compacting state makes provisions for reimbursing the commission.

b. If the insurer is unauthorized to do business in a compacting state or if the insurer is domiciled in a noncompacting state and subject to ancillary receivership, then the commission and such state shall make provisions for reimbursing the commission prior to the commission becoming receiver of such insurer.

5. To fund the cost of the initial operations of the commission until its first annual budget is adopted and related assessments have been made, contributions from compacting states and others may be accepted and a one-time assessment on insurers doing a direct insurance business in the compacting states may be made not to exceed four hundred fifty dollars ($450) per insurer.

6. The commission's adopted budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this compact. The budget shall determine the amount of the annual assessment. The commission may accumulate a net worth not to exceed 30 percent of its then annual cost of operation to provide for contingencies and events not contemplated. These accumulated funds shall be held separately and shall not be used for any other purpose. The commission's budget may include a provision for a contribution to the commission's net worth.

7. The commission shall be exempt from all taxation in and by the compacting states.

8. The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

9. The commission shall keep complete and accurate accounts of all its internal receipts (including grants and donations) and disbursements of all funds, other than receivership assets, under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of such independent auditor shall include a management and performance audit of the commission. The report of such independent audit shall be made available to the public and shall be included in and become part of the annual report of the commission to the governors and legislatures of the compacting states. The commission's internal accounts, any workpapers related to any internal audit and any workpapers related to the independent audit, shall be confidential; provided, that such materials shall be made available: (i) in compliance with the order of any court of

competent jurisdiction; (ii) pursuant to such reasonable rules as the commission shall promulgate; and (iii) to any commissioner, governor of a compacting state, or their duly authorized representatives.

10. No compacting state shall have any claim to or ownership of any property held by or vested in the commission or the commission acting as receiver or to any other commission funds held pursuant to the provisions of this compact.

Article XI

Compacting States, Effective Date, and Amendment

1. Any state is eligible to become a compacting state.

2. The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XII

Withdrawal, Default, and Termination

Section A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal; provided, that the repeal shall not apply to any receiverships, for which the commission is acting as receiver, pending on the date of the repeal except by mutual agreement of the commission and the withdrawing state.

3. The withdrawing state shall immediately notify the chairperson of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.

4. The commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

5. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. Notwithstanding the foregoing, the withdrawing state is responsible for the costs and expenses of its estates subject to this compact pending on the date of repeal; the commission and the other estates subject to this compact shall not bear any costs and expenses related to the withdrawing state's estates unless otherwise mutually agreed upon between the commission and the withdrawing state.

6. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the commission.

Section B. Default

1. If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules, all rights, privileges, and benefits conferred by this compact, and any agreements entered into pursuant to this compact shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within 60 days of the effective date of termination of a defaulting state, the commission shall notify the governor and the majority and minority leaders of the defaulting state's legislature of such termination.

3. The termination of a defaulting state shall apply to all receiverships for which the commission is acting as receiver, pending on the effective date of termination except by mutual agreement of the commission and the defaulting state.

4. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, and is responsible for the costs and expenses relating to

its estates subject to this compact pending on the date of the termination. The commission and the other estates subject to this compact shall not bear any costs or expenses relating to the defaulting state's estates unless otherwise mutually agreed upon between the commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the commission pursuant to the rules.

Section C. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or the termination by default of the compacting state which reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

Article XIII

Severability and Construction

1. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

2. The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XIV

Binding Effect of Compact and Other Laws

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of this Compact

1. All lawful actions of the commission, including all rules and operating procedures promulgated by the commission, are binding upon the compacting states.

2. All agreements between the commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

1130. (a) For purposes of paying the aggregate annual assessment required by paragraph 3 of Article X of the Interstate Life and Health Insurance Receivership Compact established by Section 1125, the Interstate Compact Contribution Fund and the Interstate Compact Life and Health Insurer Fund are created in the state treasury.

(b) For purposes of the state's share of the assessment, the commissioner shall solicit voluntary contributions from admitted insurers. All contributions received for the purpose of meeting the state's share of the assessment shall be deposited by the commissioner into the Interstate Compact Contribution Fund. Excess contributions, if any, received by the commissioner shall be separately held in the fund by the commissioner until the next assessment is due.

(c) For purposes of the insurers' portion of the assessment, the commissioner shall receive directly from each assessed insurer the payment of each assessment and temporarily deposit that assessment into the Interstate Compact Life and Health Insurer Fund.

(d) Except as provided in subdivision (e), the commissioner shall transmit to the commission, when due, and up to the amount due, all monies held in the Interstate Compact Contribution Fund and the Interstate Compact Life and Health Insurer Fund.

(e) If insufficient contributions are available in any year to pay the state's share of the assessment, or if the commissioner, after conducting a public hearing, adopts a written finding that the state should no longer participate in the interstate compact because its rules, operating procedures, or official actions work to the disadvantage of California policyholders, the commissioner shall not transmit to the commission any of the funds deposited in the Interstate Compact Contribution Fund or the Interstate Compact Life and Health Insurer Fund. Instead, the commissioner shall immediately notify the chairperson or executive director of the commission that the state will not meet its funding obligations. The commissioner shall also, at the time he or she provides the notification, request that the commission immediately proceed to

suspend or terminate the state's membership in the compact under Section 8 of Article XII of the compact.

(f) If the commissioner, pursuant to subdivision (e), requests the commission to suspend and terminate the state's membership, he or she shall immediately refund all monies held in both the Interstate Compact Contribution Fund and the Interstate Compact Life and Health Insurer Fund to those that made the voluntary contributions, assessments, or both.

1132. For purposes of subparagraph (a) of Section 1 of Article IX of the Interstate Life and Health Insurance Receivership Compact established by Section 1125, "receivership laws" when referring to the laws of the State of California, means, to the extent that they apply to life and disability insurers, those laws included within Article 14 (commencing with Section 1010) of, and Article 14.3 (commencing with Section 1064.1) of, Chapter 1 of Part 2 of Division 1.

1133. Nothing in this chapter is intended to reduce, modify, or limit the scope of Section 1010 as that section operates to provide the basic jurisdiction of the commissioner to initiate conservation proceedings pursuant to Article 14 (commencing with Section 1010) of, and Article 14.3 (commencing with Section 1064.1) of, Chapter 1 of Part 2 of Division 1 and to issue stop orders pursuant to Article 14.5 (commencing with Section 1065.1) of Chapter 1 of Part 2 of Division 1.

1134. This chapter shall become operative on January 1, 1998.

SEC. 3. The Legislature fully recognizes that under circumstances described in Section 1013 of the Insurance Code, the commissioner may be compelled to bring a conservation action summarily, and that in those instances the Department of Insurance and law enforcement personnel must act immediately and often precipitously to enter the premises and secure the records and assets of a failed or failing company. In those cases, there may arise grave danger to the health and safety of the persons acting to enforce the commissioner's order, which danger is made more severe if the fact of the impending conservation action is not handled with strictest confidentiality. The Legislature hereby urges the Interstate Insurance Receivership Commission, and the Interstate Life and Health Insurance Receivership Commission upon its creation, referenced in Section 1125 of the Insurance Code, when acting to establish its first set of rules and regulations, to establish as one of its initial acts a means of strictly confidential communication, whereby the commissioner in communicating a potential conservation action to the commission is able to communicate the facts and conditions that establish the need to conserve in strictest confidence.

CHAPTER 844

An act to add Section 1347.5 to the Penal Code, relating to testimony.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 1347.5 is added to the Penal Code, to read:

1347.5. (a) It is the intent of the Legislature, in enacting this section, to provide the court with discretion to modify court procedures, as a reasonable accommodation, to assure that adults and children with disabilities who have been victims of an alleged sexual or otherwise specified offense are able to participate effectively in criminal proceedings. In exercising its discretion, the court shall balance the rights of the defendant against the right of the victim who has a disability to full access and participation in the proceedings, while preserving the integrity of the court's truthfinding function.

(1) For purposes of this section, the term "disability" is defined in paragraphs (1) and (2) of subdivision (c) of Section 11135 of the Government Code.

(2) The right of the victim is not to confront the perpetrator, but derives under both Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. Sec. 794) and the Americans with Disabilities Act of 1990 (42 U.S.C.A. Sec. 12101 and following) as a right to participate in or benefit from the same services or services that are equal or as effective as those enjoyed by persons without disabilities.

(b) Notwithstanding any other law, in any criminal proceeding in which the defendant is charged with a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314, Section 647.6, or former Section 647a, committed with or upon a person with a disability, the court in its discretion may make accommodations to support the person with a disability, including, but not limited to, any of the following:

(1) Allow the person with a disability reasonable periods of relief from examination and cross-examination during which he or she may retire from the courtroom. The judge may also allow other witnesses in the proceeding to be examined when the person with a disability retires from the courtroom.

(2) Allow the person with a disability to utilize a support person pursuant to Section 868.5 or a regional center representative providing services to a developmentally disabled individual pursuant to Article 1 (commencing with Section 4620) or Article 2 (commencing with Section 4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code. In addition to or instead of allowing the person with a disability to utilize a support person or regional

center representative pursuant to this paragraph, the court may allow the person with a disability to utilize a person necessary to facilitate the communication or physical needs of developmentally disabled individuals.

(3) Notwithstanding Section 68119 of the Government Code, the judge may remove his or her robe if the judge believes that this formal attire prevents full participation of the person with a disability because it is intimidating to him or her.

(4) The judge, parties, witnesses, support persons, and court personnel may be relocated within the courtroom to facilitate a more comfortable and personal environment for the person with a disability as well as accommodating any specific requirements for communication by that person.

(c) The prosecutor may apply for an order that the testimony of the person with a disability at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(1) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(2) Upon timely receipt of the application, the judge shall order that the testimony of the person with a disability given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(3) If at the time of trial the court finds that further testimony would cause the person with a disability emotional trauma so that he or she is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the videotape of his or her testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(4) Any videotape that is taken pursuant to this subdivision is subject to a protective order of the court for the purpose of protecting the privacy of the person with a disability. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(d) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the person with a disability is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of the person with a disability be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, and defendant, and communicated to the courtroom by means of two-way closed-circuit television, if the court makes all of the following findings:

(1) The person with a disability will be called on to testify concerning facts of an alleged sexual offense committed on or with that person.

(2) The impact on the person with a disability of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the person with a disability unavailable as a witness unless closed-circuit television is used. The refusal of the person with a disability to testify shall not alone constitute sufficient evidence that the special procedure described in this subdivision is necessary in order to accommodate the disability. The court may take into consideration the relationship between the person with a disability and the defendant or defendants.

(A) Threats of serious bodily injury to be inflicted on the person with a disability or a family member, of incarceration, institutionalization, or deportation of the person with a disability or a family member, or of removal of the person with a disability from his or her residence by withholding needed services when the threats come from a service provider, in order to prevent or dissuade the person with a disability from attending or giving testimony at any trial or court proceeding or to prevent that person from reporting the alleged sexual offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the person with a disability during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial that causes the person with a disability to be unable to continue his or her testimony.

(e) (1) The hearing on the motion brought pursuant to this subdivision shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the person with a disability to testify at the hearing; nor shall the court deny the motion on the ground that the person with a disability has not testified.

(3) In determining whether the impact on an individual person with a disability of one or more of the factors enumerated under paragraph (2) of subdivision (d) is so substantial that the person is unavailable as a witness unless the closed-circuit television procedure is employed, the court may question the person with a disability in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person described under paragraph (2) of subdivision (b), the prosecutor, and defense counsel present. At this time the court shall explain the process to the person with a disability. The defendant or defendants shall not be present; however, the defendant or defendants shall have the opportunity to contemporaneously observe the proceedings by closed-circuit television. Defense counsel shall be afforded a reasonable opportunity to consult with the

defendant or defendants prior to the conclusion of the session in chambers.

(f) When the court orders the testimony of a victim who is a person with a disability to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of assuring the full participation of the victim who is a person with a disability by accommodating that individual's disability.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support person, if the person is part of the court's accommodation of the disability, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the person with a disability.

(5) Order that a complete record of the examination of the person with a disability, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and his or her attorney, during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape that is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the person with a disability. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(g) When the court orders the testimony of a victim who is a person with a disability to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the victim to appear in the courtroom for a limited purpose, including the identification of the defendant or defendants as the court deems necessary.

(h) The examination shall be under oath, and the defendant shall be able to see and hear the person with a disability. If two-way closed-circuit television is used, the defendant's image shall be transmitted live to the person with a disability.

(i) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(j) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(k) This section shall not be construed to obviate the need to provide other accommodations necessary to ensure accessibility of courtrooms to persons with disabilities nor prescribe a lesser standard of accessibility or usability for persons with disabilities than that provided by Title II of the Americans with Disabilities Act of 1990 (42 U.S.C.A. Sec. 12101 and following) and federal regulations adopted pursuant to that act.

CHAPTER 845

An act to add Sections 18626, 19720, and 19721 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 18626 is added to the Revenue and Taxation Code, to read:

18626. For purposes of Chapter 9 (commencing with Section 19701), which relates to criminal penalties in the case of fraudulent returns, the term "return" includes any return filed under this part using electronic technology pursuant to Section 18621.5.

SEC. 2. Section 19720 is added to the Revenue and Taxation Code, to read:

19720. (a) Any person who does any of the following is liable for a penalty of not more than five thousand dollars ($5,000):

(1) Utters, passes, negotiates, or procures a state-issued income tax refund warrant generated through the filing of a return knowing that the recipient is not entitled to the refund.

(2) Aids, abets, advises, encourages, or counsels any individual to utter, pass, negotiate, or procure a state-issued income tax refund warrant generated through the filing of a return knowing that the recipient is not entitled to the refund.

(b) The fact that an individual's name is endorsed to a state-issued refund warrant shall be prima facie evidence for all purposes that the refund warrant was actually signed by him or her.

(c) The penalty shall be recovered in the name of the people in any court of competent jurisdiction. Counsel for the Franchise Tax Board may, upon request of the district attorney or other prosecuting attorney, assist the prosecuting attorney in presenting the law or facts

to recover the penalty at the trial of a criminal proceeding for violation of this section.

(d) The person is also guilty of a misdemeanor and upon conviction shall be punishable by a fine not to exceed ten thousand dollars ($10,000) or by imprisonment not to exceed one year, or both, at the discretion of the court, together with costs of investigation and prosecution.

(e) Any individual guilty under this part shall be subject to Section 502.01 of the Penal Code.

SEC. 3. Section 19721 is added to the Revenue and Taxation Code, to read:

19721. (a) Any person who, with intent to defraud, does any of the following is liable for a penalty of not more than ten thousand dollars ($10,000):

(1) Willfully utters, passes, negotiates, or procures a state-issued income tax refund warrant generated through the filing of a return knowing that the recipient is not entitled to the refund.

(2) Willfully aids, abets, advises, encourages, or counsels any individual to utter, pass, negotiate, or procure a state-issued income tax refund warrant generated through the filing of a return knowing the recipient is not entitled to the refund.

(b) The person is also guilty of a misdemeanor and upon conviction shall be punishable by a fine not to exceed twenty thousand dollars ($20,000), or by imprisonment not to exceed one year, or both, at the discretion of the court, together with costs of investigation and prosecution.

(c) The fact that an individual's name is endorsed to a state-issued refund warrant shall be prima facie evidence for all purposes that the refund warrant was actually signed by him or her.

(d) The penalty shall be recovered in the name of the people in any court of competent jurisdiction. Counsel for the Franchise Tax Board may, upon request of the district attorney or other prosecuting attorney, assist the prosecuting attorney in presenting the law or facts to recover the penalty at the trial or a criminal proceeding for violation of this section.

(e) Any individual guilty under this part shall be subject to Section 502.01 of the Penal Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 846

An act relating to local government finance.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. (a) Notwithstanding any other provision of law, the allocations of property tax revenues in the County of San Benito, for the 1979–80 to 1993–94 fiscal years, inclusive, shall be deemed correct, except as agreed by and between the City of Hollister and the County of San Benito in resolving the case of City of Hollister, et al. v. County of San Benito, San Benito County Superior Court Case No. 21168, and no reductions or increases shall be made to those allocations for those fiscal years.

(b) Notwithstanding any other provision of law, the allocations of property tax revenues by San Benito County for the 1994–95 fiscal year, consistent with the audit of the Controller's office, shall be deemed correct and in compliance with all statutes regulating the allocation of property tax revenue in San Benito County, except as agreed by and between the Aromas Tri-County Fire District and the County of San Benito resolving the case of Aromas Tri-County Fire District v. County of San Benito, San Benito County Superior Court Case No. 21514.

SEC. 2. It is the intent of the Legislature not to validate in the future any other mistakes made in San Benito County in the allocation of property tax revenue, unless the mistake is the result of written advice from the Department of Finance with respect to the particular allocation.

SEC. 3. With respect to Section 1 of this act, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances applicable only to San Benito County. San Benito County allocated property tax revenues for the 1979–80 to 1993–94 fiscal years, inclusive, in good faith and reasonable belief that its property tax allocation methods complied with all applicable statutes and these methods were not audited or reviewed by either the Department of Finance or Controller until the 1993–94 fiscal year.

CHAPTER 847

An act to add Section 25143.8 to the Health and Safety Code, and to amend Section 13050 of the Water Code, relating to waste.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 25143.8 is added to the Health and Safety Code, to read:

25143.8. (a) For purposes of this section, "cementitious material" means cement, cement kiln dust, clinker, and clinker dust.

(b) The test specified in the regulations adopted by the department with regard to a waste exhibiting the characteristic of corrosivity if representative samples of the waste are not aqueous and produce a solution with a pH less than or equal to 2 or greater than or equal to 12.5, as specified in paragraph (3) of subdivision (a) of Section 66261.22 of Title 22 of the California Code of Regulations, as that section read on January 1, 1996, shall not apply to waste cementitious material which is managed in accordance with applicable regulations administered by the California regional water quality control board at the cement manufacturing facility where it was generated.

(c) Cementitious material which is a nonaqueous waste, is managed in accordance with applicable regulations administered by the regional water quality control board at the cement manufacturing facility where it was generated, and would otherwise be classified as a hazardous waste based solely on the test specified in paragraph (3) of subdivision (a) of Section 66261.22 of Title 22 of the California Code of Regulations, as that section read on January 1, 1996, is excluded from classification as a hazardous waste pursuant to this chapter.

SEC. 2. Section 13050 of the Water Code is amended to read:

13050. As used in this division:

(a) "State board" means the State Water Resources Control Board.

(b) "Regional board" means any California regional water quality control board for a region as specified in Section 13200.

(c) "Person" includes any city, county, district, the state, and the United States, to the extent authorized by federal law.

(d) "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(e) "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state.

(f) "Beneficial uses" of the waters of the state that may be protected against quality degradation include, but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

(g) "Quality of the water" refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

(h) "Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.

(i) "Water quality control" means the regulation of any activity or factor which may affect the quality of the waters of the state and includes the prevention and correction of water pollution and nuisance.

(j) "Water quality control plan" consists of a designation or establishment for the waters within a specified area of all of the following:

(1) Beneficial uses to be protected.

(2) Water quality objectives.

(3) A program of implementation needed for achieving water quality objectives.

(k) "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

(*l*) (1) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The waters for beneficial uses.

(B) Facilities which serve these beneficial uses.

(2) "Pollution" may include "contamination."

(m) "Nuisance" means anything which meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during, or as a result of, the treatment or disposal of wastes.

(n) "Recycled water" means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource.

(o) "Citizen or domiciliary" of the state includes a foreign corporation having substantial business contacts in the state or which is subject to service of process in this state.

(p) (1) "Hazardous substance" means either of the following:

(A) For discharge to surface waters, any substance determined to be a hazardous substance pursuant to Section 311(b)(2) of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

(B) For discharge to groundwater, any substance listed as a hazardous waste or hazardous material pursuant to Section 25140 of the Health and Safety Code, without regard to whether the substance is intended to be used, reused, or discarded, except that "hazardous substance" does not include any substance excluded from Section 311(b)(2) of the Federal Water Pollution Control Act because it is within the scope of Section 311(a)(1) of that act.

(2) "Hazardous substance" does not include any of the following:

(A) Nontoxic, nonflammable, and noncorrosive stormwater runoff drained from underground vaults, chambers, or manholes into gutters or storm sewers.

(B) Any pesticide which is applied for agricultural purposes or is applied in accordance with a cooperative agreement authorized by Section 2426 of the Health and Safety Code, and is not discharged accidentally or for purposes of disposal, the application of which is in compliance with all applicable state and federal laws and regulations.

(C) Any discharge to surface water of a quantity less than a reportable quantity as determined by regulations issued pursuant to Section 311(b)(4) of the Federal Water Pollution Control Act.

(D) Any discharge to land which results, or probably will result, in a discharge to groundwater if the amount of the discharge to land is less than a reportable quantity, as determined by regulations adopted pursuant to Section 13271, for substances listed as hazardous pursuant to Section 25140 of the Health and Safety Code. No discharge shall be deemed a discharge of a reportable quantity until regulations set a reportable quantity for the substance discharged.

(q) (1) "Mining waste" means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and overburden, as defined in Section 2732 of the Public Resources Code, and tailings, slag, and other processed waste materials, including cementitious materials that are managed at the cement manufacturing facility where the materials were generated.

(2) For the purposes of this subdivision, "cementitious material" means cement, cement kiln dust, clinker, and clinker dust.

(r) "Master recycling permit" means a permit issued to a supplier or a distributor, or both, of recycled water, that includes waste discharge requirements prescribed pursuant to Section 13263 and water recycling requirements prescribed pursuant to Section 13523.1.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 848

An act to add and repeal Chapter 8.9 (commencing with Section 10089.7) of Part 1 of Division 2 of the Insurance Code, relating to earthquake insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Chapter 8.9 (commencing with Section 10089.7) is added to Part 1 of Division 2 of the Insurance Code, to read:

CHAPTER 8.9. EARTHQUAKE INSURANCE MEDIATION

10089.7. The department shall establish a pilot program for the mediation of the disputes between insured complainants and insurers arising out of the Northridge earthquake of 1994 or any subsequent earthquake. The pilot program shall apply only to personal lines of insurance related to residential coverage. The goal of the pilot program shall be to favorably resolve a statistically significant number of disputes sent to mediation under the program. This chapter does not apply to any dispute that turns on a question of major insurance coverage or a purely legal interpretation, or disputes involving the actions of an agent or broker in which the insurer is not alleged to have been responsible for the conduct, or any

complaint the commissioner finds to be frivolous, or any dispute in which a party is alleged to have committed fraud.

10089.71. Any person having a dispute with an insurer under a policy of residential insurance arising out of the Northridge earthquake of 1994 or any subsequent earthquake may file a written complaint with the department. The complaint shall indicate that the complainant has not been able to reach a satisfactory settlement of a claim with the insurer.

10089.72. The department shall notify the insurer of the claim or dispute. To avoid referral to mediation, the insurer shall have 28 days to resolve the dispute following notice of the dispute from the department, unless the department, for good cause, extends the period by an additional 7 days.

10089.73. If the dispute is not resolved within the time period prescribed by Section 10089.72, the insurer shall notify the department of the failure, and may include the reason for the failure. The insurer may at that time notify the department of its position with respect to the dispute.

10089.74. (a) If the insurer notifies the department of the failure to resolve the dispute, the department shall notify the insured of the insured's ability to request mediation and ask the insured whether the insured requests mediation. If the insured responds affirmatively, the department shall refer the dispute to mediation.

(b) If the insurer fails to give the required notice to the department prior to the expiration of the time limits set forth in Section 10089.72, the department shall notify the insured of the insured's ability to request mediation and ask the insured whether the insured requests mediation. If the insured responds affirmatively, the department shall refer the dispute to mediation. The department may not refer a dispute to mediation if the matter turns upon a question of major insurance coverage, a purely legal interpretation, the actions of an agent or broker in which the insurer is not alleged to have been responsible for the conduct, or if a party is alleged to have committed fraud, any complaint the commissioner finds to be frivolous, or if for other good cause the commissioner determines that mediation of the dispute is inappropriate.

(c) If the insured has filed a civil complaint, the insurer is excused from mediating under this chapter any claims or disputes involved in the civil action.

10089.75. (a) Any insurer may inform an insured who has filed a complaint with the department concerning a dispute arising out of an earthquake of the existence of the mediation program and may ask the insured to seek mediation under this chapter jointly with the insurer.

(b) Notwithstanding Section 10089.82, if the commissioner makes a finding that an individual insurer has engaged in unreasonable or arbitrary refusals to mediate, the commissioner shall have the authority to require that insurer to participate in mediation in all

cases deemed by the commissioner appropriate for mediation under this chapter.

(c) Any insurer who has been ordered to participate in mediation on a mandatory basis may seek a review of the order by filing in a court of competent jurisdiction within 30 days of the order. The commissioner's order to participate in mediation, however, may not be stayed during the pendency of any judicial proceeding for any period beyond 60 days after the initial date of the order to participate. The basis for the commissioner's decision to require an insurer to participate in the mediation program shall not be made public unless review is sought. The commissioner's decision not to require an insurer to participate, including the basis for the decision, shall be made public.

(d) Any insured whose request to mediate his or her claim under this chapter was declined by an insurer may request the commissioner to require the insurer to participate in the mediation program and may seek review in a court of competent jurisdiction of the commissioner's decision not to require the insurer to participate in the mediation program. The review shall be required to be sought within 30 days after the commissioner's decision.

10089.76. Upon referral of a complaint to mediation, the department shall immediately transfer all necessary information concerning the claim, including the name and address of the insured and the insurer, to a mediator.

10089.77. The department shall contract with a diverse pool of mediators for the provision of mediation services. The contractors shall provide qualified mediators who meet standards that may be established by the commissioner. The commissioner shall establish standards in consultation with consumer groups, policyholder groups, mediators, alternative dispute resolution groups, insurers, and the State Bar. These standards shall include:

(a) Mandatory training that may be provided by the department, which shall include, at a minimum, the legal rules for insurance policy interpretation and the rights of insureds under California law, and methods of determining costs of construction and reconstruction in given geographical areas.

(b) A requirement that no mediator participating in this program may have business, familial, contractual, or other affiliation with, or financial interest in, the insured, or in any insurer, insurance agent, or agency. For purposes of this subdivision, an investment in a mutual fund that holds insurer stocks is not a financial interest. Financial interest does not include prior representation of, or an employment or contractual relationship with a law firm or lawyer who represents, one or more insurers or who represents insurance agents in connection with their business affairs, provided the law firm or lawyer has not previously represented any of the parties to the mediation.

However, any prior representation, employment, or contractual relationship shall be disclosed to the parties to the mediation. If any party objects to the mediator because of the prior representation, employment, or contractual relationship, the department shall dismiss that mediator and select a new mediator. An objection under this subdivision does not limit a party's right to object once under subdivision (d).

(c) A requirement that no mediator participating in this program may be either a lawyer or an employee of a lawyer or law firm that has represented any party to the mediation in the previous 36 months, or a person who has a business, familial, contractual, or other affiliation with a lawyer or law firm that has represented any party to the mediation in a lawsuit against the insurer in the last 36 months.

(d) Each party to the mediation may object once to the mediator assigned by the department. If a party objects to the mediator, the department shall dismiss the mediator and assign another mediator.

(e) In selecting mediators, the department shall give priority to mediators who bid less than four hundred dollars ($400) while offering complete and cost-effective mediation services. In addition, the department may use, on a pro bono basis, mediators who meet the standards of the program.

10089.78. Upon receipt of a complaint, the mediation service shall issue a notice to the insured and the insurer setting a date and time within 21 days of the date of the notice for commencement of a mediation conference. The mediator shall make all reasonable efforts to schedule the mediation at a time agreeable to both parties. The notice shall inform the parties that the cost of mediation will be borne by the insurer, except to the extent provided in Section 10089.81. The notice shall also state that in the event of a proposed settlement the insured may have three business days in which to rescind the agreement, as specified in subdivision (c) of Section 10089.82.

10089.79. The costs of mediation shall be reasonable, and shall be borne by the insurer, except as provided in Section 10089.81. The commissioner may set a fee not to exceed four hundred dollars ($400) for each dispute mediated.

10089.80. (a) The representatives of the insurer shall know the facts of the case and be familiar with the allegations of the complainant. The insurer or the insurer's representative shall produce at the settlement conference a copy of the policy and all documents from the claims file relevant to the degree of loss, value of the claim, and the fact or extent of damage.

The insured shall produce, to the extent available, all documents relevant to the degree of loss, value of the claim, and the fact or extent of damage.

The mediator may also order production of other documents that the mediator determines to be relevant to the issues under mediation. If a party declines to comply with that order, the mediator may appeal to the commissioner for a determination of whether the

documents requested should be produced. The commissioner shall make a determination within 21 days. However, the party ordered to produce the documents shall not be required to produce while the issue is before the commissioner in this 21-day period. If the ruling is in favor of production, any insurer that is subject to an order to participate in mediation issued under subdivision (a) of Section 10089.75 shall comply with the order to produce. Insureds, and those insurers that are not subject to an order to participate in mediation, shall produce the documents or decline to participate further in the mediation after a ruling by the commissioner requiring the production of those other documents. Declination of mediation by the insurer under this section may be considered by the commissioner in exercising authority under subdivision (a) of Section 10089.75.

The mediator shall have the authority to protect from disclosure information that the mediator determines to be privileged, including, but not limited to, information protected by the attorney-client or work-product privileges, or to be otherwise confidential.

(b) The mediator shall determine prior to the mediation conference whether the insured will be represented by counsel at the mediation. The mediator shall inform the insurer whether the insured will be represented by counsel at the mediation conference. If the insured is represented by counsel at the mediation conference, the insurer's counsel may be present. If the insured is not represented by counsel at the mediation conference, then no counsel may be present.

(c) Sections 703.5 and 1152.5 of the Evidence Code apply to a mediation conducted under this chapter.

(d) A mediator may not file, and a court may not consider, a declaration or finding of any kind by the mediator other than a required statement of agreement or nonagreement, unless all parties to the mediation expressly agree otherwise in writing.

(e) The statements made by the parties, negotiations between the parties, and documents produced at the mediation are confidential. However, this confidentiality shall not restrict the access of the department to documents or other information the department seeks in order to evaluate the mediation program or to comply with reporting requirements. This subdivision does not affect the discoverability or admissibility of documents that are otherwise discoverable or admissible.

10089.81. All parties to the mediation proceeding shall negotiate in good faith and shall have the authority to immediately settle claims. An insurer that fails to appear for a scheduled mediation conference or meeting for which the consumer appears shall pay the consumer for his or her actual expenses incurred in attending the conference plus the value of lost wages. An insured who has good cause for a failure to appear may reschedule one time, at a time set

by the mediator. If an insured fails to demonstrate good cause for the first failure to appear or subsequent failures to appear, that insured loses his or her right to mediate the claim under this chapter and shall pay all costs charged by the mediator up to the time of the failure to appear that terminates the mediation.

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. If the agreement is not rescinded by the insured, it is binding on the insured and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in whole or in part out of the same facts. Any applicable statute of limitations is tolled for the number of days beginning from the referral to mediation until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three business day cooling off period.

10089.83. (a) On or before August 1, 1996, and on or before August 1 of each succeeding year in which this program is in effect, the commissioner shall issue a report on the status of the program in the prior year, including statistics about the number of cases suitable for mediation, the number sent to mediation, and the number accepted, as well as declined, by the insurers, and other similar information concerning the operation of the program.

(b) At six-month intervals, the department shall collect from the mediators with which it contracts for this service the following information: the number of persons to whom mediation was offered,

the number of insurers that accepted and declined mediation, the number of settlements, and of those settlements, the number rejected within the three business day cooling off period. For each settlement, the mediation service shall also report the amount initially claimed by the consumer and the amount agreed to be paid, if any, by the insurer or other party.

(c) The department may adopt regulations, including reporting requirements, in the commissioner's discretion, to implement this chapter. The regulations shall be adopted as emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of the regulations is deemed necessary for the immediate preservation of the public peace, health or safety, or general welfare.

10089.84. This chapter will become inoperative on July 1, 1998, and is repealed as of January 1, 2000, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date. Any case referred to mediation by the department prior to July 1, 1998, shall be mediated under this chapter whether or not the mediation has been completed prior to July 1, 1998. No later than August 1, 1998, the commissioner shall report to the Governor and the Legislature on whether the pilot program should be extended, expanded, terminated, or otherwise modified and shall include specific findings regarding the use of the program by insureds and insurers.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide immediate response to the Northridge earthquake of 1994, it is necessary for this act to take effect immediately.

CHAPTER 849

An act to add Section 12606.2 to the Business and Professions Code, relating to packaging.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 12606.2 is added to the Business and Professions Code, to read:

12606.2. (a) This section applies to food containers subject to Section 403 (d) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 343 (d)), and Section 100.100 of Title 21 of the Code of

Federal Regulations. Section 12606 does not apply to food containers subject to this section.

(b) No food containers shall be made, formed, or filled as to be misleading.

(c) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for reasons other than the following:

(1) Protection of the contents of the package.

(2) The requirements of the machines used for enclosing the contents in the package.

(3) Unavoidable product settling during shipping and handling.

(4) The need for the package to perform a specific function, such as where packaging plays a role in the preparation or consumption of a food, if that function is inherent to the nature of the food and is clearly communicated to consumers.

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value that is both significant in proportion to the value of the product and independent of its function to hold the food, such as a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed or durable commemorative or promotional packages.

(6) Inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required food labeling exclusive of any vignettes or other nonmandatory designs or label information, discourage pilfering, facilitate handling, or accommodate tamper-resistent devices.

This section shall be interpreted consistent with the comments by the United States Food and Drug Administration on the regulations contained in Section 100.100 of Title 21 of the Code of Federal Regulations, interpreting Section 403(d) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 343(d)), as those comments are reported on pages 64123 to 64137, inclusive, of Volume 58 of the Federal Register.

(d) If the requirements of this section do not impose the same requirements as are imposed by Section 403(d) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 343(d), or any regulation promulgated pursuant thereto, then this section is not operative to the extent that it is not identical to the federal requirements, and for this purpose those federal requirements are incorporated into this section and shall apply as if they were set forth in this section.

(e) Any sealer may seize any container that is in violation of this section and the contents of the container. By order of the municipal

or superior court of the city or county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon any conditions that the court may impose to ensure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner thereof if the owner furnishes proper facilities for the return.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 850

An act to amend Sections 20017.81, 20038.5, 20950.1, 21101, 21251.13, 21251.147, 21296, 21364, 21373, 21382.5, 21404, and 21411 of, to add Sections 20017.791 and 20038.4 to, and to repeal Section 21406 of, the Government Code, relating to public employees.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 20017.791 is added to the Government Code, to read:

20017.791. Notwithstanding Section 20017.79, "state safety member" shall include officers and employees of the Board of Prison Terms, the Department of Corrections, The Department of the Youth Authority, or the Prison Industry Authority in the following classifications:

Classification Code	Classification
7972	Podiatrist (correctional facility)
7560	Tractor Operator–Laborer (correctional facility)

7562	Sheet Metal Worker (correctional facility)

SEC. 2. Section 20017.81 of the Government Code is amended to read:

20017.81. "State safety member" also includes officers and employees with the State Department of Mental Health and the Department of Corrections in the following classifications:

Classification Code	Classification Title
8254	Prelicensed Psychiatric Technician (forensic facility)
8253	Psychiatric Technician (forensic facility)
8252	Senior Psychiatric Technician (forensic facility)

"State safety member" also includes an officer or employee of the State Department of Mental Health at Patton State Hospital or Atascadero State Hospital, the State Department of Mental Health Psychiatric Program of California Medical Facility at Vacaville, or any other state hospital which is deemed a forensic facility, who either is excluded form the definition of state employee in subdivision (c) of Section 3513 or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service. An officer or employee may be a state safety member under this paragraph only if the person has responsibility for the direct supervision of state safety personnel specified in the classifications listed in this section and if the State Personnel Board determines that these officers and employees meet the state safety membership criteria established pursuant to Section 18717. The Department of Personnel Administration shall determine which classes meet the above conditions and report its findings to the Public Employees' Retirement System, whereupon the change in membership categories shall take effect.

Any person so designated pursuant to this section may elect, within 90 days of notification by the board, to remain subject to the miscellaneous service retirement benefit and contribution rate by filing an irrevocable notice of election with the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21251.13 only for service also included in the federal system.

SEC. 4. Section 20038.4 is added to the Government Code, to read:

20038.4. "Industrial" with respect to state miscellaneous members also means death or disability on or after January 1, 1995, resulting from an injury that is a direct consequence of a violent act perpetrated on his or her person by a patient or client of the State Department of Mental Health at Metropolitan State Hospital or Napa State Hospital if:

(a) The member was performing his or her duties within a treatment ward at the time of the injury, or

(b) The member was not within a treatment ward but was acting within the scope of his or her employment at the hospital and is regularly and substantially as part of his or her duties in contact with the patients or clients, and

(c) The member at the time of injury was employed in a state bargaining unit for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section, or

(d) The member was either excluded from the definition of state employee in subdivision (c) of Section 3513 or was a nonelected officer or employee of the executive branch of government who was not a member of the civil service.

SEC. 5. Section 20038.5 of the Government Code is amended to read:

20038.5. "Industrial" with respect to state miscellaneous members also means death or disability after January 1, 1993, resulting from an injury that is a direct consequence of a violent act perpetrated on his or her person by a patient or client of the State Department of Mental Health at Patton State Hospital or Atascadero State Hospital, an inmate at the Department of Mental Health Psychiatric Program at California Medical Facility at Vacaville, or a patient at any other state hospital which is deemed a forensic facility if:

(a) The member was performing his or her duties within a treatment ward at the time of the injury, or

(b) The member was not within a treatment ward but was acting within the scope of his or her employment at the hospital and is regularly and substantially as part of his or her duties in contact with the patients or clients, and

(c) The member at the time of injury was employed in a state bargaining unit for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section, or

(d) The member was either excluded from the definition of state employee in subdivision (c) of Section 3513 or was a nonelected officer or employee of the executive branch of government who was not a member of the civil service.

SEC. 6. Section 20950.1 of the Government Code is amended to read:

20950.1. (a) A state member who became subject to the Second Tier upon election or upon membership in the Second Tier on or after January 1, 1985, shall be retired for service upon his or her written application to the board if he or she has attained age 55 and is credited with 10 years of state service.

(b) A state member who elected coverage under Section 21251.13 for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 20013.7 during the period between November 1, 1988, and October 31, 1989, and who would otherwise be subject to Section 21251.146 or 21251.147, shall be retired for service upon his or her written application to the board if he or she has attained age 50 and is credited with five years of state service. No benefit shall be payable for service rendered under the Second Tier retirement formula unless the member has rendered 10 years of state service except as provided in subdivision (c).

(c) Notwithstanding subdivision (a) or (b), a state member in the Second Tier who is credited with five years of state service prior to January 1, 1985, may retire with less than 10 years of state service upon his or her written application to the board if he or she has attained age 50.

SEC. 7. Section 21101 of the Government Code is amended to read:

21101. The board may reinstate a person from retirement upon (a) his or her application to the board for reinstatement and (b) the determination of the board, the determination of the board that his or her age at the date of application for reinstatement is at least six months less than the age of compulsory retirement for service applicable to members of the class or category in which it is proposed to employ him or her. The provisions of clause (b) of this section shall apply only to patrol, state peace officer/firefighters, and safety members. The effective date of such reinstatement for purposes of this article shall be the first day of compensated employment following approval of reinstatement.

SEC. 8. Section 21251.13 of the Government Code is amended to read:

21251.13. The combined current and prior service pensions for a local miscellaneous member, a school member, and for a state miscellaneous member, is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service except service in a category of membership other than that of state miscellaneous member or local miscellaneous member or school member or service covered under

the First Tier retirement formula, with which the member is entitled to be credited at retirement:

Age of Retirement	Fraction
50	.546
$50^1/_4$	.554
$50^1/_2$	.562
$50^3/_4$	.570
51	.578
$51^1/_4$	.586
$51^1/_2$	.595
$51^3/_4$	.603
52	.612
$52^1/_4$	.621
$52^1/_2$	.630
$52^3/_4$	.639
53	.648
$53^1/_4$	.658
$53^1/_2$	.668
$53^3/_4$	.678
54	.688
$54^1/_4$	.698
$54^1/_2$	.709
$54^3/_4$	.719
55	.730
$55^1/_4$	.741
$55^1/_2$	.753
$55^3/_4$	.764
56	.776
$56^1/_4$	.788
$56^1/_2$	.800
$56^3/_4$	.813
57	.825
$57^1/_4$	.839
$57^1/_2$	.852
$57^3/_4$	.865
58	.879
$58^1/_4$	.893
$58^1/_2$	.908
$58^3/_4$	.923

59	.937
$59^1/_4$	.953
$59^1/_2$	.969
$59^3/_4$	.985
60	1.000
$60^1/_4$	1.017
$60^1/_2$	1.034
$60^3/_4$	1.050
61	1.067
$61^1/_4$	1.084
$61^1/_2$	1.101
$61^3/_4$	1.119
62	1.136
$62^1/_4$	1.154
$62^1/_2$	1.173
$62^3/_4$	1.191
63 and over	1.209

The fractions specified in the above table shall be reduced by one-third as applied to that part of final compensation which does not exceed four hundred dollars ($400) per month for all service of a member any of whose service has been included in the federal system. This reduction shall not apply to a member employed by a contracting agency which enters into a contract after July 1, 1971, and elects not to be subject to this paragraph or with respect to service rendered after the termination of coverage under the federal system with respect to the coverage group to which the member belongs.

This section shall apply only to members whose retirement is effective on or after July 1, 1971.

The improved retirement allowance provided by this section is granted subject to future reduction prior to a member's retirement, by offset of federal system benefits or otherwise, as the Legislature may from time to time deem appropriate because of changes in such federal system benefits.

SEC. 9. Section 21251.147 of the Government Code is amended to read:

21251.147. The service retirement allowance for a state miscellaneous or state industrial member who elects to be subject to this section shall be: the sum of the allowance for service rendered under the Second Tier retirement formula, computed pursuant to Section 21251.146, added to the allowance for service rendered as a state miscellaneous or state industrial member covered under the First Tier formula, computed pursuant to Section 21251.13.

SEC. 10. Section 21296 of the Government Code is amended to read:

21296. The disability retirement pension, for service subject to Section 21251.13, for a member whose effective date of retirement is on or after the operative date of the amendments to this section at the 1972 Regular Session shall be such an amount as with that portion of his or her annuity provided by his or her accumulated normal contributions, will make his or her disability retirement allowance equal:

(a) Ninety percent of one-fiftieth of his or her final compensation multiplied by the number of years of service credited to him or her.

(b) If the disability retirement allowance computed under subdivision (a) does not exceed one-third of his or her final compensation, 90 percent of one-fiftieth of his final compensation multiplied by the number of years of service which would be creditable to him or her were his or her service to continue until attainment by him or her of age 60, but in that case the retirement allowance shall not exceed one-third of final compensation.

Subdivision (b) is not applicable to members who are not entitled, at the time of retirement, to be credited with at least 10 years of state service.

SEC. 11. Section 21364 of the Government Code is amended to read:

21364. The special death benefit consists of the following:

(a) An amount equal to and derived from the same source as the basic death benefit exclusive of the contributions from which the annuity provided under subdivision (d) is paid.

(b) An amount sufficient, when added to the amount provided under subdivision (a), to provide, when applied according to tables adopted by the board, a monthly death allowance equal to one-half of his or her final compensation in the membership category applicable to him or her at the time of the injury or the onset of the disease causing death, payable to the surviving spouse to whom he or she was married either continuously for at least one year prior to death, or prior to sustaining the injury or disease resulting in death, as long as the surviving spouse lives or until his or her remarriage; or, if there is no surviving spouse or if the spouse dies or remarries before all children of the deceased member attain age 22, to his or her children under 22 collectively until every child shall have died, married, or attained age 22. However, no child shall receive any part of the allowance after marrying or attaining age 22.

(c) During the lifetime of the surviving spouse or until the spouse remarries, an additional percentage of the death benefit allowed by this section, exclusive of the annuity under subdivision (d), shall be paid to the spouse of a member who is killed in the performance of his or her duty or who dies as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of his or her duty, for each of his or her children during the lifetime of the child, or until the child marries or reaches the age

of 22, as follows: for one child, 25 percent; for two children, 40 percent; and for three or more children, 50 percent.

(d) An annuity which is the actuarial equivalent, assuming monthly payments for life to the surviving spouse, of the deceased's accumulated additional contributions at the date of his or her death, plus his or her accumulated contributions at that date based on compensation earned in any membership category other than the category applicable to him or her at the time of the injury or the onset of the disease causing death.

If the surviving spouse does not have custody of the member's children, the additional amount payable pursuant to this section shall be payable to the person having custody of the children for each child during the lifetime of the child, or until the child marries or reaches the age of 22.

The computation for time prior to entering the membership category applicable to the deceased at the time of the injury or the onset of the disease causing death shall be based on the compensation earnable by him or her in the position first held by him or her in that category.

"Spouse," for purposes of this section, means a wife or husband.

(e) On and after October 1, 1965, this section shall apply to all contracting agencies and to the employees of all contracting agencies whether or not the agencies have previously elected to be subject to this section.

Any child whose eligibility for an allowance pursuant to this section, commenced on or after October 1, 1965, shall lose that eligibility effective on the date of his adoption.

SEC. 12. Section 21373 of the Government Code is amended to read:

21373. Notwithstanding any other provisions of this part, the benefits payable to a surviving spouse pursuant to Sections 21364, 21365.5, 21365.55, 21365.6, and Article 6 (commencing with Section 21380), shall be paid as follows:

(a) Any surviving spouse who remarries on or after the operative date of the statute adding this section shall continue to receive the lifetime allowance to which he or she is entitled, without reduction. However, pursuant to Section 22811.5, the surviving spouse who remarries on or after that date may not enroll his or her new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse.

(b) Any surviving spouse who elected the reduction specified in Section 21372 shall be restored to the lifetime allowance to which he or she was originally entitled, for all benefits payable on or after the operative date of the statute adding this section.

This section shall not apply to any contracting agency, unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or, in the case of contracts made after the operative date of the statute

adding this section by express provision in the contract making the contracting agency subject to this section. This section shall only apply to a surviving spouse of a local member employed by the contracting agency whose remarriage occurred on or after the date the agency elects to be subject to this section. Any surviving spouse of a local member of the contracting agency, who elected the reduction specified in Section 21372, shall be restored to the lifetime allowance to which he or she was originally entitled, for all benefits payable on or after the election by the contracting agency to be subject to this section.

This section shall apply to a surviving spouse of a school member employed by a school district whose remarriage occurred on or after January 1, 1991. Any surviving spouse of a school member, who elected the reduction specified in Section 21372, shall be restored to the lifetime allowance to which he or she was originally entitled, for all benefits payable on or after January 1, 1991.

The employer is not required to meet and confer with an employee organization regarding the subject matter of this section, and the subject matter shall not be included within the scope of representation pursuant to Section 3504.

SEC. 13. Section 21382.5 of the Government Code is amended to read:

21382.5. (a) In lieu of benefits provided in Section 21382, 21382.2, or 21382.4, if the death benefit provided by Section 21361 is payable on account of a local member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21360, or if an allowance under Section 21365.5 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving spouse of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability which began before and has continued without interruption after the attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are 22 years of age or are so incapacitated.

(3) The surviving spouse of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21361 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21365.5, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the contracting agency, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the

member prior to the occurrence of the injury or onset of the illness which resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid one thousand nine hundred dollars ($1,900) per month if there is one child or two thousand two hundred eighty dollars ($2,280) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, which is in excess of nine hundred fifty dollars ($950) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies or remarries, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid nine hundred fifty dollars ($950) per month.

(B) If there are two children, the children shall be paid one thousand nine hundred dollars ($1,900) per month divided equally between them.

(C) If there are three or more children, the children shall be paid two thousand two hundred eighty dollars ($2,280) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 60 years, and who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness which resulted in death and has not remarried subsequent to the member's death, shall be paid nine hundred fifty dollars ($950) per month. No allowance shall be paid under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be three hundred eighty dollars ($380) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies or remarries and there is no surviving child, or if the surviving spouse dies or remarries and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 60 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid nine hundred fifty dollars ($950) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time for the death of the member.

(d) This section shall only apply to members of a contracting agency, which by amending its contract, first elects effective on or after January 1, 1994, to make this section applicable to local members employed by the agency. On and after January 1, 1994, contracting agencies already subject to Section 21382, 21382.2, or 21382.4 may elect by contract amendment to be subject to this section. Notwithstanding Section 21382.4, a public agency first contracting with the board on and after January 1, 1994, may include this section in its contract. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency which is subject to this section.

(e) The rate of contribution of an employer subject to this section shall be calculated using the term insurance valuation method. If a contracting agency which is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency which is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

SEC. 14. Section 21404 of the Government Code is amended to read:

21404. The insurance benefit shall be paid upon death of an insured member of this system to the beneficiary entitled to receive the basic or special death benefit if all of the following conditions occur:

(a) Death occurs either:

(1) While in state service; or

(2) While absent from state service on military service or on approved leave of absence; or

(3) Within four months of discontinuance of state service; or

(4) While physically or mentally incapacitated for performance of duty continuously from discontinuance of state service.

(b) If either:

(1) Death occurs while a member and before the effective date of retirement; or

(2) If an optional settlement 2 or 3 or an optional settlement 4 involving payment of an allowance throughout the life of the beneficiary has not been elected and if an allowance under Section 21263, 21263.2, 21263.4, or 21263.5 is not payable, and death occurs on or after the effective date of retirement and before the mailing of a retirement allowance warrant.

(c) Death occurs during a period of insurance.

(d) Death occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21360.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that, if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 15. Section 21406 of the Government Code is repealed.

SEC. 15. Section 21411 of the Government Code is amended to read:

21411. (a) The board shall contract with carriers offering long-term care insurance plans and enter into health care service plan contracts covering long-term care.

The long-term care insurance plans and health care service plan contracts covering long-term care shall be made available periodically during open enrollment periods determined by the board.

(b) The board shall award contracts to carriers who are qualified to provide long-term care benefits, and may develop and administer self-funded long-term care insurance plans. The board may offer one or more long-term care insurance plans or health care service plan contracts covering long-term care and may offer service or indemnity-type plans.

(c) The long-term care insurance plans and health care service plan contracts covering long-term care shall include home, community, and institutional care and shall, to the extent determined by the board, provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, if the carrier has been approved by the Department of Corporations pursuant to the Knox-Keene Health Care Service Plan Act (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) The classes of persons who shall be eligible to enroll are:

(1) Active and retired members and annuitants of the Public Employees' System, and their spouses, their parents, and their spouses' parents.

(2) Active and retired members and annuitants of any county or district subject to the County Employees Retirement Law of 1937, and their spouses, their parents, and their spouses' parents.

(3) Active and retired members and annuitants of the State Teachers' Retirement System, and their spouses, their parents, and their spouses' parents.

(4) Active employees and retirees and annuitants of any public agency that is a contracting agency under this part or Part 5 (commencing with Section 22751), and their spouses, their parents, and their spouses' parents.

(5) Active and retired members and annuitants of the Judges' Retirement System, and their spouses, their parents, and their spouses' parents.

(6) Active and retired members and annuitants of the Judges' Retirement System II, and their spouses, their parents, and their spouses' parents.

(7) Active and retired members and annuitants of the Legislators' Retirement System, and their spouses, their parents, and their spouses' parents.

(8) Members of the California Assembly and Senate and their spouse, their parents and their spouse's parents.

(9) Active and retired members and annuitants, and other classes of employees of other public employee retirement systems or public employers as the board determines may be eligible under the standards the board may prescribe, and their spouses, their parents, and their spouses' parents.

(10) Active employees and retirees and annuitants of any agency specified in paragraphs (1) through (9) who reside in the United States, its territories and possessions, or in a country in which a provider network can be established comparable in quality and effectiveness to those established in the United States.

(e) Any California public agency or retirement system may contract with the board to extend the provisions of this article to its active and retired employees and annuitants.

(f) Irrespective of paragraphs (1) through (10) of subdivision (d), no person shall be enrolled unless he or she meets the eligibility and underwriting criteria established by the board.

(g) Irrespective of paragraphs (1) through (10) of subdivision (d), enrollment of active employees of the State of California shall be subject to Section 19867.

(h) The board shall establish eligibility criteria for enrollment, establish appropriate underwriting criteria for potential enrollees, define the scope of covered benefits, define the criteria to receive benefits, and set any other standards as needed.

(i) The full cost of enrollment in a long-term care insurance plan or in health care service plan contracts covering long-term care shall be paid by the enrollees.

(j) The long-term care insurance plans and health care service plan contracts covering long-term care shall not become part of, or subject to, the retirement or health benefits programs administered by the system.

(k) For any self-funded long-term care plan developed by the board, the premiums shall be deposited in the Public Employees' Long-term Care Fund.

SEC. 16. It is the intent of the Legislature in amending Section 20038.5 of the Government Code during the 1995–96 Regular Session to clarify the application of its provisions. Accordingly, the amendments shall not be construed to affect any claim respecting any injuries at Patton State Hospital or Atascadero State Hospital prior to January 1, 1993, or to affect any claim respecting any injuries at Metropolitan State Hospital or Napa State Hospital prior to January 1, 1995.

CHAPTER 851

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. This act may be cited as the Second Validating Act of 1995.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts of any kind.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.
Conservancy districts.
Cotton pest abatement districts.
County boards of education.
County drainage districts.
County flood control and water districts.
County free library systems.
County maintenance districts.
County sanitation districts.
County service areas.
County transportation commissions.
County water agencies.
County water authorities.
County water districts.
County waterworks districts.
Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Distribution districts of any public body.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.

Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.

Unified and union school districts public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) "Bonds" means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) "Hereafter" means any time subsequent to the effective date of this act.

(d) "Heretofore" means any time prior to the effective date of this act.

(e) "Now" means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the withdrawal or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To validate the organization, boundaries, acts, proceedings, and bonds of public bodies as soon as possible, it is necessary that this act take immediate effect.

CHAPTER 852

An act to amend Sections 113, 27510, 27511, 27512, 27517, 27519, 27523, 27531, 27534, 27535, 27550, 27560, 27601, 27604, 27613, 27614, 27621, 27622, 27623, 27625, 27627, 27629, 27632, 27675, 27791, 27844, 27845, and 27849 of, to add Sections 27508, 27512.5, 27514, 27514.1, 27514.2, 27518.5, 27519.1, 27519.2, 27523.1, 27523.2, 27523.3, 27523.4, 27523.8, 27525.1, 27531.5, 27533.5, 27536.3, 27601.5, 27602.3, 27602.4, 27612.1, 27677, and 27832 to, and to repeal and add Sections 27606 and 27612 of, the Health and Safety Code, relating to food facilities.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 113 of the Health and Safety Code is amended to read:

113. (a) The fees or charges for the issuance or renewal of any permit, license, registration, or document pursuant to Sections 403, 436.53, 527, 1017, 1639.5, 1676, 1677, 2202, 2805, 4083, 11887, 23013, 25049, 25059, 25064, 25079.3, 25094, 25628, 25694, 25696, 25697, 25812.8, 25816, 25817, 26262, 26506.2, 26593.2, 26593.4, 26688, 27010, 27011, 27531, 27612.1, 27614, paragraph (2) of subdivision (c) of Section 27623, 27629, subdivision (b) of Section 27791, 27849, 28126, 28410, 28411, and 28702 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section. This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 27508 is added to the Health and Safety Code, to read:

27508. (a) Any person requesting the department to undertake any activity pursuant to Section 27531, 27612.1, 27614, paragraph (2) of subdivision (c) of Section 27623, 27629, subdivision (b) of 27791, or 27849 shall pay the department's costs incurred in undertaking the activity. The department's services shall be assessed at the rate of fifty-five dollars ($55) per hour, and it shall be entitled to recover any other costs reasonably and actually incurred in performing those activities, including, but not limited to, the costs of additional inspection and laboratory testing. For purposes of this section, the department's hourly rate shall be adjusted annually in accordance with Section 113.

(b) The department shall provide to the person paying the required fee a statement, invoice, or similar document that describes in reasonable detail the costs paid.

(c) For purposes of this section only, the term "person" does not include any city, county, city and county, or other political subdivision of the state or local government.

SEC. 3. Section 27510 of the Health and Safety Code is amended to read:

27510. "Adulterated" means food that bears or contains any poisonous or deleterious substance that may render the food impure or injurious to health. Food is also adulterated if it is manufactured, prepared, or stored in a manner that deviates from an HACCP plan as defined in Section 27523.2 and adopted pursuant to Section 27612 or 27612.1 so as to pose a discernable increase in hazard risk.

SEC. 4. Section 27511 of the Health and Safety Code is amended to read:

27511. (a) "Approved" means acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, current public health principles, practices, and generally recognized industry standards that protect public health.

(b) "Approved source" means a producer, manufacturer, distributor, or food establishment that is acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, with current public health principles and practices, and generally recognized industry standards that protect public health.

SEC. 5. Section 27512 of the Health and Safety Code is amended to read:

27512. "Certified farmers' market" means a location certified by the county agricultural commissioner and operated as specified in Article 6.5 (commencing with Section 1392) of Title 3 of the California Code of Regulations.

SEC. 6. Section 27512.5 is added to the Health and Safety Code, to read:

27512.5. "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing. Comminuted includes fish and other animal products that are reduced in size and restructured or reformulated such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two or more types of those products that have been reduced in size and combined, such as sausages made from two or more of those products.

SEC. 7. Section 27514 is added to the Health and Safety Code, to read:

27514. "Control point" means any distinct procedure or step in receiving, storing, handling, preparing, displaying, or dispensing a food.

SEC. 8. Section 27514.1 is added to the Health and Safety Code, to read:

27514.1. "Critical control point" means a control point where any loss of control may result in an unacceptable health risk pertaining to a food.

SEC. 9. Section 27514.2 is added to the Health and Safety Code, to read:

27514.2. "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter shall be

controlled at a critical control point to minimize the risk that an identified food safety hazard may occur.

SEC. 10. Section 27517 of the Health and Safety Code is amended to read:

27517. "Enforcement officer" means the director, agents, or environmental health specialists appointed by the Director of Health Services, and all local health officers, directors of environmental health, and their duly authorized registered environmental health specialists and environmental health specialist trainees.

SEC. 11. Section 27518.5 is added to the Health and Safety Code, to read:

27518.5. "Fish" means fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

SEC. 12. Section 27519 of the Health and Safety Code is amended to read:

27519. "Food" means any raw or processed substance, ice, beverage, including water, or ingredient intended to be used as food, drink, confection, or condiment for human consumption.

SEC. 13. Section 27519.1 is added to the Health and Safety Code, to read:

27519.1. "Food condiment" means nonpotentially hazardous relishes, spices, sauces, confections, or seasonings, that require no additional preparation, and that are used on a food item, such as ketchup, mustard, mayonnaise, sauerkraut, salsa, salt, sugar, pepper, or chile peppers.

SEC. 14. Section 27519.2 is added to the Health and Safety Code, to read:

27519.2. "Food contact surface" means a surface of equipment or a utensil with which food normally comes into contact.

SEC. 15. Section 27523 of the Health and Safety Code is amended to read:

27523. "Frozen food" means a food maintained at a temperature at which all moisture therein is in a solid state.

SEC. 16. Section 27523.1 is added to the Health and Safety Code, to read:

27523.1. "HACCP" means Hazard Analysis Critical Control Point.

SEC. 17. Section 27523.2 is added to the Health and Safety Code, to read:

27523.2. "HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles that were developed by the National Advisory Committee on Microbiological Criteria for Foods and complies with the requirements of Section 27612.

SEC. 18. Section 27523.3 is added to the Health and Safety Code, to read:

27523.3. (a) "HACCP principles" means the seven basic steps of HACCP, as prescribed in subdivision (b).

(b) (1) The completion of hazard analysis identification by identifying the likely hazards to consumers presented by a specific food.

(2) The determination of critical control points in receiving, storage, preparation, display, and dispensing of a food.

(3) The setting of measurable critical limits for each critical control point determined.

(4) Developing and maintaining monitoring practices to determine if critical limits are being met.

(5) Developing and utilizing corrective action plans when failure to meet critical limits is detected.

(6) Establishing and maintaining a recordkeeping system to verify adherence to a HACCP plan.

(7) Establishing a system of audits to:

(A) Initially verify the effectiveness of the critical limits set and appropriateness of the determination of critical control points.

(B) Periodically verify the effectiveness of the HACCP plan.

SEC. 19. Section 27523.4 is added to the Health and Safety Code, to read:

27523.4. "Hazard" means a biological, chemical, or physical property that may cause an unacceptable public health risk.

SEC. 20. Section 27523.8 is added to the Health and Safety Code, to read:

27523.8. "Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low-acid canned foods, to maintain the commercial sterility of its contents after processing.

SEC. 21. Section 27525.1 is added to the Health and Safety Code, to read:

27525.1. "Injected" means manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices that may be referred to as "injecting," "pinning," or "stitch pumping."

SEC. 22. Section 27531 of the Health and Safety Code is amended to read:

27531. "Potentially hazardous food" means food that is in a form capable of (1) supporting rapid and progressive growth of infectious or toxigenic microorganisms that may cause food infections or food intoxications, or (2) supporting the growth or toxin production of Clostridium botulinum. "Potentially hazardous food" does not include foods that have a pH level of 4.6 or below, foods that have a water activity (a_w) value of 0.85 or less under standard conditions, food products in hermetically sealed containers processed to prevent

spoilage, or food that has been shown by appropriate microbial challenge studies approved by the enforcement agency not to support the rapid and progressive growth of infectious or toxigenic microorganisms that may cause food infections or food intoxications, or the growth and toxin production of Clostridium botulinum.

SEC. 23. Section 27531.5 is added to the Health and Safety Code, to read:

27531.5. "Premises" means the food facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the permit holder that may impact food establishment personnel, facilities, or operations.

SEC. 24. Section 27533.5 is added to the Health and Safety Code, to read:

27533.5. "Ready-to-eat food" means food that is in a form that is edible without additional washing, cooking, or preparation by the food facility or the consumer and that is reasonably expected to be consumed in that form.

SEC. 25. Section 27534 of the Health and Safety Code is amended to read:

27534. "Refrigeration unit" means a mechanical unit that extracts heat from an area through liquification and evaporation of a fluid by a compressor, flame, or thermoelectric device, and includes a mechanical thermostatic control device that regulates refrigerated blown air into an enclosed area at or below the minimum required food storage temperature of potentially hazardous foods in conformance with Section 27601.

SEC. 26. Section 27535 of the Health and Safety Code is amended to read:

27535. "Remodel" means construction, building, or repair to the food facility that requires a permit from the local building authority. For purposes of Article 11 (commencing with Section 27670), Article 12 (commencing with Section 27790), and Article 16 (commencing with Section 27840), remodel means any replacement or significant modification of an integral piece of equipment.

SEC. 27. Section 27536.3 is added to the Health and Safety Code, to read:

27536.3. "Sanitization" means the application of heat or approved chemical sanitizer on cleaned food contact surfaces.

SEC. 28. Section 27550 of the Health and Safety Code is amended to read:

27550. A person proposing to build or remodel a food facility shall submit complete, easily readable plans, drawn to scale, and specifications to the local enforcement agency for review and approval before starting any new construction or remodeling of any facility for use as a retail food facility as defined in this chapter. Plans and specifications may also be required by the local enforcement agency if it determines that they are necessary to assure compliance with the requirements of this chapter. The plans shall be approved

or rejected within 20 working days after receipt by the local enforcement agency and the applicant shall be notified of the decision. Unless the plans are approved or rejected within 20 working days, they shall be deemed approved. The building department shall not issue a building permit for a food facility until after it has received plan approval by the local enforcement agency. Nothing in this section shall require that plans or specifications be prepared by someone other than the applicant.

SEC. 29. Section 27560 of the Health and Safety Code is amended to read:

27560. Enforcement officers are charged with the enforcement of this chapter and all regulations adopted pursuant to it.

An enforcement officer may enter, inspect, issue citations, and secure any sample, photographs, or other evidence from any food facility, or any facility suspected of being a food facility, for the purpose of enforcing this chapter. If a food facility is operating under a HACCP plan, as defined in Section 27523.2 and adopted pursuant to Section 27612 or 27612.1, then the enforcement officer may inspect and secure as evidence any documents, or copies thereof, bearing upon the facility's adherence to the HACCP plan for the purpose of determining compliance with the plan. A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 30. Section 27601 of the Health and Safety Code is amended to read:

27601. (a) Except as otherwise provided in this section, all potentially hazardous food, excluding raw shell eggs, shall be held at or below 7 degrees Celsius (45 degrees Fahrenheit) or shall be kept at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times. Storage and display of raw shell eggs shall be governed by Sections 27601.5 and 27832.

(b) (1) Commencing January 1, 1997, all potentially hazardous food shall be held at or below 5 degrees Celsius (41 degrees Fahrenheit) or shall be kept at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times, except for the following:

(A) Unshucked live molluscan shellfish shall not be stored or displayed at a temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(B) Frozen potentially hazardous foods shall be stored and displayed in their frozen state unless being thawed in accordance with Section 27622.

(C) Potentially hazardous foods held for dispensing in serving lines and salad bars during periods not to exceed 12 hours in any 24-hour period or held in vending machines may not exceed 7 degrees Celsius (45 degrees Fahrenheit). For purposes of this subdivision, a display case shall not be deemed to be a serving line.

(D) Pasteurized milk and pasteurized milk products in original, sealed containers shall not be held at an ambient temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(2) Nothing in this subdivision shall be deemed to require any person to replace or modify any existing refrigeration equipment owned by that person on January 1, 1997, until January 1, 2002. For purposes of this paragraph, neither a simple adjustment of temperature controls nor a needed repair shall constitute a modification.

(c) Potentially hazardous foods may be held at temperatures other than those specified in this section when being heated or cooled, or when the food facility operates pursuant to a HACCP plan adopted pursuant to Section 27612 or 27612.1. If it is necessary to remove potentially hazardous food from specified holding temperatures to facilitate preparations, this preparation shall be diligent, and in no case shall the period of an ambient-temperature preparation step exceed two hours without a return to the specified holding temperatures. The total ambient-temperature holding of a potentially hazardous food for the purposes of preparation shall not exceed a total cumulative time of four hours. For purposes of this subdivision, preparation shall be deemed to be "diligent" with respect to raw shell eggs held for the preparation of egg-containing foods that are prepared to the specific order of the customer as long as the total ambient-temperature holding of these eggs does not exceed a total time of four hours.

(d) A thermometer accurate to plus or minus 1 degree Celsius (2 degrees Fahrenheit) shall be provided for each refrigeration or freezer unit, shall be located to indicate the air temperature in the warmest part of the unit and, except for vending machines, shall be affixed to be readily visible. Except for vending machines, an accurate easily readable metal probe thermometer suitable for measuring the temperature of food shall be readily available on the premises.

SEC. 31. Section 27601.5 is added to the Health and Safety Code, to read:

27601.5. (a) Commencing January 1, 1998, and until January 1, 2000, raw shell eggs shall be stored and displayed at an ambient temperature of 7 degrees Celsius (45 degrees Fahrenheit) or below.

(b) Notwithstanding subdivision (a), raw shell eggs may be stored and displayed unrefrigerated if all of the following conditions are met:

(1) Not more than four days have elapsed from the date of pack.

(2) The eggs were not previously refrigerated.

(3) The eggs are not stored or displayed at an ambient temperature above 32 degrees Celsius (90 degrees Fahrenheit).

(4) Retail egg containers are prominently labeled "REFRIGERATE AFTER PURCHASE" or a conspicuous sign is

posted advising consumers that these eggs are to be refrigerated as soon as practical after purchase.

(5) Retail egg containers are conspicuously identified with the date of the pack.

(6) Any eggs that are unsold after four days from the date of the pack shall be stored and displayed pursuant to subdivision (a), diverted to pasteurization, or destroyed in a manner approved by the enforcement agency.

SEC. 33. Section 27602.3 is added to the Health and Safety Code, to read:

27602.3. (a) Whenever food has been prepared so that it becomes potentially hazardous, or is potentially hazardous food that has been heated, it shall be rapidly cooled if not held at or above 60 degrees Celsius (140 degrees Fahrenheit).

(b) After heating or hot holding, potentially hazardous food shall be cooled rapidly according to the following:

(1) From 60 degrees Celsius, (140 degrees Fahrenheit) to 21 degrees Celsius (70 degrees Fahrenheit) within two hours.

(2) From 21 degrees Celsius (70 degrees Fahrenheit) to 5 degrees Celsius (41 degrees Fahrenheit) or below within four hours.

(c) If prepared at ambient temperature, potentially hazardous food shall be cooled rapidly from ambient temperature to 5 degrees Celsius (41 degrees Fahrenheit) or below within four hours.

(d) The rapid cooling of potentially hazardous food shall be completed by one or more of the following methods based on the type of food being cooled:

(1) Placing the food in shallow, heat-conducting pans.

(2) Separating the food into smaller or thinner portions.

(3) Using rapid-cooling equipment.

(4) Using containers that facilitate heat transfer.

(5) Adding ice as an ingredient.

(6) Inserting appropriately designed containers in an ice bath and stirring frequently.

(7) In accordance with a HACCP plan adopted pursuant to Section 27612 or 27612.1.

(8) Utilizing other effective means that have been approved by the enforcement agency.

(e) When potentially hazardous food is placed in cooling or cold-holding equipment, food containers in which the food is being cooled shall be:

(1) Arranged in the equipment, to the extent practicable, to provide maximum heat transfer through the container walls.

(2) Loosely covered, or uncovered if protected from overhead contamination, to facilitate heat transfer from the surface of the food.

(3) Stirred as necessary to evenly cool a liquid or a semi-liquid food.

(f) Notwithstanding subdivision (e), other methods of cooling potentially hazardous food may be utilized, unless deemed

unacceptable by the enforcing agency, including, but not limited to, a HACCP plan adopted pursuant to Section 27612 or 27612.1.

SEC. 34. Section 27602.4 is added to the Health and Safety Code, to read:

27602.4. (a) Food shall be inspected as soon as practicable upon receipt and prior to any use, storage, or resale.

(b) Food shall be accepted only if the inspection conducted upon receipt determines that the food satisfies all of the following:

(1) Was prepared by and received from approved sources.

(2) Is received in a wholesome condition.

(3) Is in containers that are not contaminated or damaged in a manner as to permit contamination of food.

(4) Is in containers and on pallets that are not infested with vermin.

(c) Potentially hazardous food shall be inspected for signs of spoilage and randomly checked for adherence to the temperature requirements set forth in Section 27601. No temperatures need be taken of foods that are hard-frozen or are visibly well packed in ice.

(d) Shell eggs shall be clean and unbroken upon receipt.

(e) (1) No raw or raw frozen molluscan shellfish shall be accepted unless each container is properly labeled with the species, quantity, harvest site, date of harvest, and name and certification number of the harvester or original shipper or both. The shellfish certification tag or label shall be maintained upon the original container until emptied and then retained for a period of not less than 90 days from the date of receipt. In the case of a food establishment that sells full containers of shucked or unshucked shellfish, an invoice or written record containing all of the required shellfish information may be maintained, for a period of not less than 90 days from the date of receipt, in lieu of maintaining the certification tag or label as provided in the preceding sentence.

(2) Live molluscan shellfish may not be accepted unless received at an internal temperature of 7 degrees Celsius (45 degrees Fahrenheit) or below; provided, however, that the shellfish may be accepted at a temperature above 7 degrees Celsius (45 degrees Fahrenheit) if received on the date of harvest.

(f) Frozen food shall be accepted only if there are no visible signs of thawing or refreezing.

SEC. 35. Section 27604 of the Health and Safety Code is amended to read:

27604. (a) (1) No unpackaged food that has been served to any person or returned from any eating area shall be served again or used in the preparation of other food.

(2) No food prepared or stored in a private home shall be used, stored, served, offered for sale, sold, or given away in a food facility.

(3) Except as provided in paragraph (4), a private home shall not be used for the purpose of giving away, selling, or handling food at retail, as defined in Section 27536.

(4) Nonperishable, prepackaged food may be given away, sold, or handled from a private home. For purposes of this paragraph only: (A) "nonperishable food" means a food that is not a potentially hazardous food, and that does not show signs of spoiling, becoming rancid, or developing objectable odors during storage at ambient temperatures; and (B) no food that has exceeded the labeled shelf life date recommended by the manufacturer shall be deemed to be "nonperishable."

(b) Except as provided in subdivision (c) of Section 27621, every bakery product shall have a protective wrapping which shall bear a label which complies with the labeling requirements prescribed by the Sherman Food, Drug, and Cosmetic Law (Division 21 (commencing with Section 26000)). Bakery products sold directly to a restaurant, catering service, retail bakery, or sold over the counter directly to the consumer by the manufacturer or bakery distributor shall be exempt from the provisions of this subdivision. French style, hearth-baked, or hard-crusted loaves and rolls shall be considered properly wrapped if contained in an open-end bag of sufficient size to enclose the loaves or rolls.

SEC. 36. Section 27606 of the Health and Safety Code is repealed.

SEC. 37. Section 27606 is added to the Health and Safety Code, to read:

27606. (a) Only those insecticides, rodenticides, and other pesticides that are specifically approved for use in a food facility may be used.

(b) All poisonous substances, detergents, bleaches, cleaning compounds, and all other injurious or poisonous materials shall be used and stored in containers specifically and plainly labeled as to contents, hazard, and use, except for those products held for retail sale.

(c) All poisonous substances, detergents, bleaches, cleaning compounds, and all other injurious or poisonous materials shall be stored and used only in a manner that is not likely to cause contamination or adulteration of food, food contact surfaces, utensils, or packaging materials.

SEC. 38. Section 27612 of the Health and Safety Code is repealed.

SEC. 39. Section 27612 is added to the Health and Safety Code, to read:

27612. (a) Food facilities may operate pursuant to a HACCP plan.

(b) The person operating a food facility pursuant to a HACCP plan shall designate at least one person to be responsible for developing HACCP plans, verifying that HACCP plans are effective, and training employees.

(1) The designated person shall have knowledge in the causes of foodborne illness.

(2) The designated person shall have knowledge of HACCP principles and their application.

(c) A minimum of one person per shift shall be designated who is knowledgeable in the HACCP plan or plans adopted by the operator to be responsible for adherence to any HACCP plan used, take corrective actions when necessary, and assure monitoring records are properly completed.

(d) Food receiving, storage, display, and dispensing procedures may be addressed under a general HACCP plan if the foods have common hazards and critical control points.

(e) Food facilities may engage in the following only pursuant to a HACCP plan adopted pursuant to Section 27612 or 27612.1: (1) acidification of potentially hazardous foods to prevent bacterial growth; (2) packing potentially hazardous foods in an oxygen-reduced atmosphere for a period that exceeds 10 days; (3) storing partially cooked meals in sealed containers at temperatures above negative 17 degrees Celsius (0 degrees Fahrenheit) for a period that exceeds 10 days; (4) preserving foods by smoking, curing, or using food additives; or (5) controlling the safety of potentially hazardous foods by using time limits.

(f) All critical limit monitoring equipment shall be suitable for its intended purpose and be calibrated as specified by its manufacturer. The food facility shall maintain all calibration records for a period not less than two years.

(g) No verification of the effectiveness of a critical limit is required if the critical limits used in the HACCP plan do not differ from the critical limits set forth in Sections 27531, 27601, and 27602.4.

(h) HACCP training of employees shall be documented and HACCP training records of an employee shall be retained for the duration of employment or a period not less than two years, whichever is greater. Training given to employees shall be documented as to date, trainer, and subject.

(i) All critical control point monitoring records shall be retained for a period not less than 90 days.

(j) Nothing in this section shall be deemed to require the enforcement agency to review or approve a HACCP plan.

SEC. 40. Section 27612.1 is added to the Health and Safety Code, to read:

27612.1. (a) Any HACCP plan that uses only time as a critical limit to assure the safety of a potentially hazardous food or uses critical limits other than those stated in Sections 27531, 27601, and 27602.4 shall not be implemented without prior review and approval by the enforcement agency.

(b) Any HACCP plan using acidification or water activity to prevent the growth of Clostridium botulinum shall not be implemented without prior review and approval by the department.

(c) The enforcement agency shall collect fees sufficient only to cover the costs for review, inspections, and any laboratory samples taken.

(d) Any HACCP plan may be disapproved if it does not comply with HACCP principles.

(e) The enforcement agency may suspend or revoke, as set forth in this subdivision, its approval of a HACCP plan without prior notice if the plan: is determined to pose a public health risk due to changes in scientific knowledge or the hazards present; or there is a finding that the food facility does not have the ability to follow its HACCP plan; or there is a finding that the food facility does not consistently follow its HACCP plan.

(1) Within 30 days of written notice of suspension or revocation of approval, the food facility may request a hearing to present information as to why the HACCP plan suspension or revocation should not have taken place or to submit HACCP plan changes.

(2) The hearing shall be held within 15 working days of the receipt of a request for a hearing. Upon written request of the permittee the hearing officer may postpone any hearing date, if circumstances warrant that action.

(3) The hearing officer shall issue a written notice of decision within five working days following the hearing. If the decision is to suspend or revoke approval, the reason for suspension or revocation shall be included in the written decision.

SEC. 41. Section 27613 of the Health and Safety Code is amended to read:

27613. (a) Manual sanitization shall be accomplished in the final sanitizing rinse by one of the following:

(1) Contact with a solution of 100 ppm available chlorine solution for 30 seconds.

(2) Contact with a solution of 25 ppm available iodine for one minute.

(3) Contact with a solution of 200 ppm quaternary ammonium for one minute.

(4) Contact with water of at least 82 degrees Celsius (180 degrees Fahrenheit) for 30 seconds.

(5) Contact with any other chemical sanitizer that meets the requirements of Section 178.1010 of Title 21 of the Code of Federal Regulations when used in accordance with the manufacturer's use directions as specified on the product label.

(b) In-place sanitizing shall be as described in paragraph (1), (2), (3), or (4) of subdivision (a).

(c) Other methods may be used if approved by the department.

(d) Testing equipment and materials shall be provided to adequately measure the applicable sanitization method.

SEC. 42. Section 27614 of the Health and Safety Code is amended to read:

27614. All new and replacement food-related and utensil-related equipment shall meet or be equivalent to approved applicable sanitation standards.

The department, in consultation with the California Conference of Directors of Environmental Health, shall approve the sanitation standards, shall recognize which testing organizations are qualified to perform evaluations in accordance with those standards, and shall develop sanitation standards where necessary. In the absence of approved applicable sanitation standards, food-related and utensil-related equipment shall be approved by the enforcement agency.

Nothing in this section shall preclude the department from approving nationally recognized sanitation standards. Until the department approves standards pursuant to this section, standards adopted by nationally recognized testing organizations, as of January 1, 1997, may be used.

SEC. 43. Section 27621 of the Health and Safety Code is amended to read:

27621. (a) Adequate and suitable space shall be provided for the storage of food. Except for large or bulky food containers, all food shall be stored at least 15 centimeters (6 inches) off the floor or under other conditions that are approved. Containers may be stored on dollies, racks, or pallets not meeting this height requirement, if these items are easily movable. All cartons, boxes, or other materials used in the packaging of any food shall be protected at all times from dirt, vermin, and other forms of contamination or adulteration. All returned or damaged food products and food product from which the label has been removed shall be separated and stored in a separate area and in a manner that shall prevent adulteration of other foods and shall not contribute to a vermin problem. Bulk food not stored in original packaging shall be stored in containers identifying the food by common name.

(b) Unpackaged food may be displayed in bulk for customer self-service under the following conditions:

(1) Produce and food requiring further processing may be displayed on open counters or in containers.

(2) Salad bars, buffet-type food service, and other ready-to-eat food shall:

(A) Be shielded so as to intercept a direct line between the customer's mouth and the food being displayed, or shall be in a container that has a tight-fitting, securely attached lid, or may be dispensed from approved mechanical dispensers.

(B) Be stored so as to be protected from vermin or other contamination.

(C) When displayed in a self-service container, shall be provided with a utensil with a handle or other approved device or mechanism for dispensing the product.

(3) Except for salad bar and buffet-type food service, a label is conspicuously displayed in plain view of the customer and securely attached to each self-service container, or in clear relationship thereto, that contains all of the following:

(A) The common name of the product.

(B) A declaration of the ingredients used by their common or usual name in descending order of predominance by weight. The declaration shall be provided in writing to the food establishment by the manufacturer, packer, or distributor.

(4) Nonfood items shall be displayed and stored in an area separate from food.

(c) Unpackaged food may be displayed and sold in bulk in other than self-service containers if both of the following conditions are satisfied:

(1) The food is served by an employee of the food establishment directly to a consumer.

(2) The food is displayed in clean, sanitary, and covered or otherwise protected containers.

(d) If the director makes a specific finding that a disease is actually transmitted by the method of dispensing unpackaged foods, as prescribed by this section, the director may establish by regulation greater restrictions on the sale of that food than are required by this section. These regulations shall bear directly on the specific relationship between the disease actually transmitted and the dispensing methods permitted by this section.

SEC. 39. Section 27622 of the Health and Safety Code is amended to read:

27622. (a) Frozen food that has been thawed shall be cooked or otherwise processed before it may be refrozen.

(b) Potentially hazardous frozen foods shall be thawed only:

(1) In refrigeration units.

(2) Under potable running water for a period not to exceed two hours. The water temperature shall not exceed 24 degrees Celsius (75 degrees Fahrenheit) and shall be of sufficient velocity to flush loose food particles into the sink drain.

(3) In a microwave oven.

(4) As part of the cooking process.

SEC. 44. Section 27623 of the Health and Safety Code is amended to read:

27623. (a) All utensils and equipment shall be scrapped, cleaned, or sanitized as circumstances require.

(b) All food establishments in which food is prepared or in which multiservice kitchen utensils are used shall have a sink with at least three compartments with two integral metal drainboards. Additional drainage space may be provided that is not necessarily attached to the sink. The sink compartments and drainage facilities shall be large enough to accommodate the largest utensil or piece of equipment to be cleaned therein. A one-compartment or two-compartment sink that is in use on January 1, 1996, may be continued in use until replaced. The enforcement officer may approve the continued use of a one-compartment or two-compartment sink even upon replacement if the installation of a three-compartment sink would

not be readily achievable and where other approved sanitation methods are used.

(c) All food establishments in which multiservice consumer utensils are used shall clean the utensils in one of the following ways:

(1) Handwashing of utensils using a three-compartment metal sink with dual integral metal drainboards where the utensils are first washed by hot water and a cleanser until they are clean, then rinsed in clear, hot water before being immersed in a final warm solution meeting the requirements of Section 27613.

(2) Machine washing of utensils in machines using a hot water or chemical sanitizing rinse shall meet or be equivalent to sanitation standards approved pursuant to Section 27614 and shall be installed and operated in accordance with those standards. The machines shall be of a type, and shall be installed and operated as approved by the department. The velocity, quantity, and distribution of the washwater, type and concentration of detergent used therein, and the time the utensils are exposed to the water, shall be sufficient to clean the utensils. All new spray-type dish machines designed for hot water sanitizing shall be equipped with a self-sealing temperature and pressure test plug. The test plug shall be located immediately upstream of the rinse manifold in a horizontal position and on the machine exterior.

(3) A two-compartment metal sink, having metal drainboards, equipped for hot water sanitization, which is in use on January 1, 1985, may be continued in use until replaced.

(4) Other methods may be used after approval by the department.

(d) Hot and cold water under pressure shall be provided through a mixing valve to each sink compartment in all food establishments constructed on or after January 1, 1985.

(e) All utensil washing equipment, except undercounter dish machines, shall be provided with two integral metal drainboards of adequate size and construction. One drainboard shall be attached at the point of entry for soiled items and one shall be attached at the point of exit for cleaned and sanitized items. Where an undercounter dish machine is used, there shall be two metal drainboards, one for soiled utensils and one for clean utensils, located adjacent to the machine. The drainboards shall be sloped and drained to an approved waste receptor. This requirement may be satisfied by using the drainboards appurtenant to sinks as required in subdivision (b) and paragraph (1) of subdivision (c), if the facilities are located adjacent to the machine.

(f) The handling of cleaned and soiled utensils, equipment, and kitchenware shall be undertaken in a manner which will preclude possible contamination of cleaned items with soiled items.

(g) All utensils, display cases, windows, counters, shelves, tables, refrigeration units, sinks, dishwashing machines, and other equipment or utensils used in the preparation, sale, service, and

display of food shall be made of nontoxic, noncorrosive materials, shall be constructed, installed, and maintained to be easily cleaned, and shall be kept clean and in good repair.

(h) Utensils and equipment shall be handled and stored so as to be protected from contamination. Single-service utensils shall be obtained only in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used once only.

(i) Equipment food-contact surfaces and utensils shall be cleaned and sanitized as follows:

(1) Each time there is a change in processing between types of animal products except when products are handled in the following order: any cooked ready-to-eat products first; raw beef and lamb products second; raw fish products third; and raw pork or poultry products last.

(2) Each time there is a change from working with raw foods of animal origin to working with ready-to-eat foods.

(3) Between uses with raw fruits or vegetables and with potentially hazardous food.

(4) Before each use of a food temperature measuring device.

(5) At any time during the food handling operation when contamination may have occurred.

(j) (1) Except as provided in paragraphs (2) and (3) of this subdivision, if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.

(2) Equipment food-contact surfaces and utensils may be cleaned less frequently than every four hours if the utensils and equipment are used to prepare food in a refrigerated room, at or below 13 degrees Celsius (55 degrees Fahrenheit), and the utensils and equipment are cleaned at least every 24 hours.

(3) Equipment food-contact surfaces and utensils may be cleaned less frequently than every four hours if the enforcement agency approves the cleaning schedule utilized based on a consideration of the following factors:

(A) Characteristics of the equipment and its use.

(B) The type of food involved.

(C) The amount of food residue accumulation.

(D) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive growth of infectious or toxicogenic microorganisms that may cause food infections or food intoxications.

(k) Nonfood contact surfaces of equipment shall be cleaned at a frequency necessary to prevent accumulation of residue.

SEC. 45. Section 27625 of the Health and Safety Code is amended to read:

27625. All plumbing and plumbing fixtures shall be installed in compliance with local plumbing ordinances, shall be maintained so

as to prevent any contamination, and shall be kept clean, fully operative, and in good repair.

All liquid wastes shall be disposed of through the plumbing system that shall discharge into the public sewerage or into an approved private sewage disposal system.

All steam tables, ice machines and bins, food preparation sinks, utensil washing sinks, display cases, and other similar equipment that discharge liquid waste shall be drained by means of indirect waste pipes, and all wastes drained by them shall discharge through an airgap into an open floor sink or other approved type of receptor that is properly connected to the drainage system. Drainage from refrigeration units shall be conducted in a sanitary manner to a floor sink or other approved device by an indirect connection or to a properly installed and functioning evaporator. Indirect waste receptors shall be located to be readily accessible for inspection and cleaning. Dishwashing machines may be connected directly to the sewer immediately downstream from a floor drain or they may be drained through an approved indirect connection. Utensil washing sinks in use on January 1, 1996, that are directly plumbed may be continued in use.

SEC. 46. Section 27627 of the Health and Safety Code is amended to read:

27627. Handwashing facilities shall be provided within or adjacent to toilet rooms and shall be equipped with an adequate supply of hot and cold running water under pressure. Facilities constructed on or after January 1, 1985, shall have the water provided from a combination faucet, or water from a premixing faucet that supplies warm water for a minimum of 10 seconds while both hands are free for washing. The number of handwashing facilities required shall be in accordance with local building and plumbing ordinances. Handwashing cleanser and single-use sanitary towels or hot-air blowers shall be provided in dispensers at, or adjacent to, handwashing facilities. Food establishments beginning construction or extensive remodeling on or after January 1, 1996, shall provide facilities exclusively for handwashing in food preparation areas, that are sufficient in number and conveniently located so as to be accessible at all times for use by food handlers.

SEC. 47. Section 27629 of the Health and Safety Code is amended to read:

27629. Ventilation shall be provided to remove toxic gases, heat, grease, vapors, and smoke from the food establishment.

All areas shall have sufficient ventilation to facilitate proper food storage and to provide a reasonable condition of comfort for each employee, consistent with the job performed by the employee. On or after January 1, 1985, there shall be provided mechanical exhaust ventilation at or above all newly installed cooking equipment as required in Article 10.4 (commencing with Section 13670) of Title 17

of, and Chapter 4-20 (commencing with Section 4-2000) of Part 4 of Title 24 of, the California Code of Regulations.

This section shall not apply to cooking equipment when the equipment has been submitted to the department for evaluation, and it has found that the equipment does not produce toxic gases, smoke, grease, vapors, or heat when operated under conditions recommended by the manufacturer. The department may recognize a testing organization to perform any necessary evaluations.

Toilet rooms shall be vented to the outside air by means of an openable, screened window, an air shaft, or a light-switch-activated exhaust fan, consistent with the requirements of local building codes.

SEC. 48. Section 27632 of the Health and Safety Code is amended to read:

27632. (a) Except as provided in subdivision (b) the walls and ceilings of all rooms shall be of a durable, smooth, nonabsorbent, light colored, and washable surface.

For purposes of this chapter, light colored shall mean having a light reflectance value of 70 percent or greater.

(b) This section shall not apply to the following areas:

(1) Walls and ceilings of bar areas in which alcoholic beverages are sold or served directly to the patrons, except wall areas adjacent to bar sinks and areas where food is prepared.

(2) Areas where food is stored only in unopened bottles, cans, cartons, sacks, or other original shipping containers.

(3) Dining and sales areas.

(4) Offices.

(5) Restrooms that are used exclusively by the patrons; provided, however, that the walls and ceilings in such restrooms shall be of a nonabsorbent and washable surface.

(c) Acoustical paneling may be utilized providing it is installed not less than 1.8 meters (6 feet) above the floor. Any perforations shall not penetrate the entire depth of the panel, shall not be greater than 3 millimeters ($^1/_8$ inch) in any dimension, and shall not comprise more than 25 percent of the exposed panel surface. The paneling shall otherwise meet the requirements of this section.

(d) Conduits of all types shall be installed within walls as practicable. When otherwise installed, they shall be mounted or enclosed so as to facilitate cleaning.

SEC. 49. Section 27675 of the Health and Safety Code is amended to read:

27675. Vehicles on which nonprepackaged hot dogs, popcorn, or snowcones are sold or offered for sale shall, in addition to the requirements of Section 27672, be constructed and equipped as follows:

(a) The food compartment shall be completely closed. The opening to the food compartment shall be sufficiently large to permit food assembly and service operations and shall be provided with a tightly fitted closure that, when closed, protects interior surfaces

from dust, debris, and vermin. All food compartments and food contact surfaces shall be constructed so as to be smooth, easily accessible, and easily cleanable.

(b) A one-compartment metal sink, handwashing cleanser and single-service towels shall be provided. The sink shall be furnished with warm running water that is at least 38 degrees Celsius (101 degrees Fahrenheit) and cold water. The warm and cold water shall be provided through a mixing valve. The sink shall be of a size suitable for washing hands and shall be large enough to accommodate the largest utensils washed. The location of the sink, handwashing cleanser and single service towels shall be easily accessible and unobstructed to the operator in the working area. The minimum warm water holding capacity shall be one-half gallon.

(c) A water supply tank of at least 18 liters (5 gallons) capacity.

(d) A wastewater tank of at least 28 liters (7.5 gallons) capacity.

SEC. 50. Section 27677 is added to the Health and Safety Code, to read:

27677. Vehicles that are occupied during normal business operations shall have a clear, unobstructed height over the aisle-way portion of the unit of at least 188 centimeters (74 inches) from floor to ceiling, and a minimum of 76 centimeters (30 inches) of unobstructed horizontal aisle space. This section shall not apply to vehicles under permit prior to January 1, 1996.

SEC. 51. Section 27791 of the Health and Safety Code is amended to read:

27791. (a) All mobile food preparation units, stationary mobile food preparation units, commissaries, and other approved facilities shall meet the applicable requirements in Article 6 (commencing with Section 27590), Article 7 (commencing with Section 27600), and Article 8 (commencing with Section 27620), unless specifically exempted from any of these provisions as provided in this article, and shall meet the provisions of Article 10 (commencing with Section 13600) of, and Article 10.1 (commencing with Section T17-13611) of Subchapter 2 of Chapter 5 of Part 1 of Title 17 of the California Code of Regulations, except that a hose used for filling water tanks and used for cleaning the interior of a mobile food preparation unit from a commissary that services mobile food preparation units is not required to be kept at least four feet above the ground at all times if the hose is equipped with a quick disconnect device, retrofitted on the end of the hose so that it seals the opening when not in use. Hoses inside the mobile preparation unit and potable water tank connectors shall have matching connecting devices. Devices for external cleaning may not be used inside the mobile preparation unit for potable water purposes. Hoses and faucets equipped with quick connect and disconnect devices for these purposes shall be deemed to meet the requirements of Section T17-13613 of Title 17 of the California Code of Regulations. Mobile food preparation units and stationary mobile food preparation units shall be exempt from the

requirements of Sections 27626 and 27628, and subdivision (b) of Section 27634.

(b) Each stationary mobile food preparation unit shall be certified pursuant to Article 10 (commencing with Section 13600) of Subchapter 2 of Chapter 5 of Part 1 of Title 17 of the California Code of Regulations before commencing operation each calendar year. The local enforcement agency shall address all applicable construction standards and submit proof of certification to the state department. Construction recertification within a calendar year shall not be required unless either of the following occurs:

(1) Where structural modifications are made.

(2) Where otherwise required by the state department.

The state department may issue an annual certificate of compliance for each certified vehicle, as required by regulation.

SEC. 52. Section 27832 is added to the Health and Safety Code, to read:

27832. Raw shell eggs may be stored and displayed without refrigeration if all of the following conditions are met:

(a) The eggs were produced by poultry owned by the seller and collected on the seller's property.

(b) The eggs are not placed in direct sunlight during storage or display.

(c) Retail egg containers are prominently labeled "REFRIGERATE AFTER PURCHASE" or the seller posts a conspicuous sign advising consumers that the eggs are to be refrigerated as soon as practical after purchase.

(d) Retail egg containers are conspicuously identified as to the date of the pack.

(e) The eggs have been cleaned and sanitized.

(f) The eggs are not checked, cracked, or broken.

(g) Any eggs that are stored and displayed at temperatures of 90 degrees Fahrenheit or below and that are unsold after four days from the date of pack shall be stored and displayed at an ambient temperature of 7 degrees Celsius (45 degrees Fahrenheit) or below, diverted to pasteurization, or destroyed in a manner approved by the enforcement agency.

(h) Any eggs that are stored and displayed at temperatures above 90 degrees Fahrenheit that are unsold after four days from the date of pack shall be diverted to pasteurization or destroyed in a manner approved by the enforcement agency.

(i) This section shall become operative on January 1, 1998.

SEC. 53. Section 27844 of the Health and Safety Code is amended to read:

27844. The onsite food establishment shall support a satellite food distribution facility as defined in subdivision (b) of Section 27536.5 by doing all of the following where appropriate:

(a) Unpacking from bulk potentially hazardous foods.

(b) Filling suitable dispensers with condiments.

(c) Mixing, blending, forming, cooking or otherwise preparing all unpackaged potentially hazardous foods.

(d) Heating to a minimum temperature of 140 degrees Fahrenheit all potentially hazardous foods that are intended to be served or held hot.

(e) Cooling, to the temperatures specified in Section 27601, potentially hazardous foods that are intended to be served or held cold.

(f) Packing any unpackaged food into suitable, covered containers prior to transport.

(g) Providing storage for foods not described in Section 27843 during periods of inoperation.

(h) Cleaning and sanitizing all multi-use utensils and easily removable food contact surfaces in accordance with the requirements of Section 27623.

SEC. 54. Section 27845 of the Health and Safety Code is amended to read:

27845. Restrooms shall comply with Section 27626 or Section 27626.1.

SEC. 55. Section 27849 of the Health and Safety Code is amended to read:

27849. The enforcement agency shall review and approve written procedures, schedules, and record exemplars to assure all of the following:

(a) That in-place cleaning procedures for equipment and structures are adequate in frequency, soil removal, sanitizing, and disposal of wastewater, washwater, and refuse.

(b) That food transported to and from the onsite food establishment will not be exposed to contamination.

(c) That potentially hazardous food will be held at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times.

This section shall apply to vehicles that operate within a defined and securable perimeter as prescribed in subdivision (b) of Section 27536.5.

SEC. 56. It is the intent of the Legislature that the State Department of Health Services, in cooperation and consultation with the California Conference of Directors of Environmental Health and appropriate food service industry representatives, (1) study the need, if any, for, and the feasibility of, establishing minimum knowledge and expertise requirements to be a retail food handler or an operator of a food facility, and (2) report its findings to the Legislature by July 1, 1996.

SEC. 57. It is the intent of the Legislature that the State Department of Health Services, in cooperation and consultation with the California Conference of Directors of Environmental Health and appropriate food service industry representatives, study the need, if any, for developing a more comprehensive system of regulating

vehicles and other mobile food service mechanisms, as well as commissaries that service these vehicles and other mechanisms, and report its findings to the Legislature on or before July 1, 1996.

SEC. 58. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Also notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 853

An act to add Chapter 5.45 (commencing with Section 2546) to Division 2 of the Business and Professions Code, relating to prescription lenses.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Chapter 5.45 (commencing with Section 2546) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 5.45. NONRESIDENT CONTACT LENS SELLERS

2546. This act may be cited as the "Nonresident Contact Lens Seller Registration Act."

2546.1. (a) On and after January 1, 1997, no person located outside California shall ship, mail, or deliver in any manner, contact lenses at retail to a patient at a California address unless registered with the Division of Licensing of the Medical Board of California.

(b) With regard to any person subject to registration pursuant to this section, only replacement contact lenses provided pursuant to a

valid prescription as described in Section 2546.6 may be shipped, mailed, or delivered directly to a patient.

2546.2. All references in this chapter to the division shall mean the Division of Licensing of the Medical Board of California.

2546.3. The division may adopt, amend, or repeal any rules and regulations that are reasonably necessary to carry out this chapter.

2546.4. Application for registration as a nonresident contact lens seller shall be made on forms prescribed by the division, accompanied by the fee prescribed by this chapter, and shall bear the signature of the individual, or individuals if a copartnership, or the president or secretary if a corporation, and shall contain the name under which the person proposes to do business, location of the business, and the designation of an agent for service of process in California. The board shall be notified within 30 days of any change of name, location of business, corporate officer, or agent of service.

2546.5. In order to obtain and maintain registration, a nonresident contact lens seller shall:

(a) Be in good standing and either registered or otherwise authorized in the state in which the selling facility is located and from which the contact lenses are sold.

(b) Comply with all directions and requests for information made by the board as authorized under this chapter.

(c) Maintain records of contact lenses shipped, mailed, or delivered to patients in California for a period of at least three years.

(d) Provide a toll-free telephone service for responding to patient questions and complaints during the applicant's regular hours of operation, but in no event less than six days per week and 40 hours per week. The toll-free number shall be included in literature provided with each mailed contact lens prescription. All questions relating to eye care for the lens prescribed shall be referred back to the contact lens prescriber.

(e) Provide the following or a substantially equivalent written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN.

(f) Disclose in any price advertisement any required membership fees, enrollment fees, and indicate that shipping costs may apply unless the advertisement specifically and clearly states otherwise.

2546.6. Contact lenses may be sold only upon written prescription dated one year or less from the date the lenses are supplied, or within any shorter period of time that is specified by the prescription. If the written prescription is not available to the seller, the seller shall confirm the prescription by direct communication with the

prescriber or his or her authorized agent prior to selling any lens, and maintain a record of the communication.

2546.7. (a) A certificate may be denied, suspended, revoked, or otherwise subjected to discipline for any of the following:

(1) Incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or any employee of the registrant.

(2) An act of dishonesty or fraud.

(3) Committing any act or being convicted of a crime constituting grounds for denial of licensure or registration under Section 480.

(4) Any violation of Section 2546.5 or 2546.6.

(b) The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all powers granted therein.

2546.8. Every registration issued to a nonresident contact lens seller shall expire 24 months after the initial date of issuance. To renew an unexpired registration, the registrant shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the division, and pay the renewal fee prescribed by this chapter.

2546.9. The amount of fees prescribed in connection with the registration of nonresident contact lens sellers is that established by the following schedule:

(a) The initial registration fee shall be one hundred dollars ($100), except that if the registration will expire less than one year after the issuance, then the fee shall be fifty dollars ($50).

(b) The renewal fee shall be one hundred dollars ($100).

(c) The delinquency fee shall be twenty-five dollars ($25).

(d) The fee for replacement of a lost, stolen, or destroyed registration shall be twenty-five dollars ($25).

(e) The fees collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund, and shall be available, upon appropriation, to the Medical Board of California for the purposes of this chapter.

CHAPTER 854

An act to amend Sections 10610.2, 10610.4, 10611.5, 10615, 10620, 10621, 10631, 10632, 10633, 10641, 10642, 10644, 10650, 10652, 10653, and 10656 of, to add Section 10616.5 to, and to add Article 2.5 (commencing with Section 10635) to Chapter 3 of Part 2.6 of Division 6 of, the Water Code, relating to water.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 10610.2 of the Water Code is amended to read:

10610.2. The Legislature finds and declares as follows:

(a) The waters of the state are a limited and renewable resource subject to ever increasing demands.

(b) The conservation and efficient use of urban water supplies are of statewide concern; however, the planning for that use and the implementation of those plans can best be accomplished at the local level.

(c) A long-term, reliable supply of water is essential to protect the productivity of California's businesses and economic climate.

(d) As part of its long-range planning activities, every urban water supplier should make every effort to ensure the appropriate level of reliability in its water service sufficient to meet the needs of its various categories of customers during normal, dry, and multiple dry water years.

(e) This part is intended to provide assistance to water agencies in carrying out their long-term resource planning responsibilities to ensure adequate water supplies to meet the needs of both existing customers and future demands for water.

SEC. 2. Section 10610.4 of the Water Code is amended to read:

10610.4. The Legislature finds and declares that it is the policy of the state as follows:

(a) The management of urban water demands and efficient use of water shall be actively pursued to protect both the people of the state and their water resources.

(b) The management of urban water demands and efficient use of urban water supplies shall be a guiding criterion in public decisions.

(c) Urban water suppliers shall be required to develop water management plans to actively pursue the efficient use of available supplies.

SEC. 3. Section 10611.5 of the Water Code is amended to read:

10611.5. "Demand management" means those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies.

SEC. 4. Section 10615 of the Water Code is amended to read:

10615. "Plan" means an urban water management plan prepared pursuant to this part. A plan shall describe and evaluate sources of supply, reasonable and practical efficient uses, reclamation and demand management activities. The components of the plan may vary according to an individual community or area's characteristics and its capabilities to efficiently use and conserve water. The plan shall address measures for residential, commercial, governmental, and industrial water demand management as set forth in Article 2

(commencing with Section 10630) of Chapter 3. In addition, a strategy and time schedule for implementation shall be included in the plan.

SEC. 5. Section 10616.5 is added to the Water Code, to read:

10616.5. 'Recycled water" means the reclamation and reuse of wastewater for beneficial use.

SEC. 6. Section 10620 of the Water Code is amended to read:

10620. (a) Every urban water supplier shall prepare and adopt an urban water management plan in the manner set forth in Article 3 (commencing with Section 10640).

(b) Every person that becomes an urban water supplier shall adopt an urban water management plan within one year after it has become an urban water supplier.

(c) An urban water supplier indirectly providing water shall not include planning elements in its water management plan as provided in Article 2 (commencing with Section 10630) that would be applicable to urban water suppliers or public agencies directly providing water, or to their customers, without the consent of those suppliers or public agencies.

(d) (1) An urban water supplier may satisfy the requirements of this part by participation in areawide, regional, watershed, or basinwide urban water management planning where those plans will reduce preparation costs and contribute to the achievement of conservation and efficient water use.

(2) Each urban water supplier shall coordinate the preparation of its plan with other appropriate agencies in the area , including other water suppliers that share a common source, water management agencies, and relevant public agencies, to the extent practicable.

(e) The urban water supplier may prepare the plan with its own staff, by contract, or in cooperation with other governmental agencies.

SEC. 7. Section 10621 of the Water Code is amended to read:

10621. (a) Each urban water supplier shall update its plan at least once every five years on or before December 31, in years ending in five and zero.

(b) The amendments to, or changes in, the plan shall be adopted and filed in the manner set forth in Article 3 (commencing with Section 10640).

SEC. 8. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments as described in subdivision (a).

(c) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(1) An average water year.

(2) A single dry water year.

(3) Multiple dry water years.

For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors including, but not necessarily limited to, all of the following uses:

(A) Single-family residential.

(B) Multifamily.

(C) Commercial.

(D) Industrial.

(E) Institutional and governmental.

(F) Landscape.

(G) Sales to other agencies.

(H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

(I) Agricultural.

(2) The water use projections shall be in the same five-year increments as described in subdivision (a).

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

(A) Interior and exterior water audits and incentive programs for single-family residential, multifamily residential, governmental, and institutional customers.

(B) Enforcement of plumbing fixture efficiency standards and programs to retrofit less efficient fixtures.

(C) Distribution system water audits, leak detection, and repair.

(D) Metering with commodity rates for all new connections and retrofit of existing connections.

(E) Large landscape water audits and incentives.

(F) Landscape water conservation requirements for new and existing commercial, industrial, institutional, governmental, and multifamily developments.

(G) Public information.

(H) School education.

(I) Commercial and industrial water conservation.

(J) New commercial and industrial water use review.

(K) Conservation pricing for water service and conservation pricing for sewer service, where the urban water supplier also provides sewer service.

(L) Landscape water conservation for new and existing single-family homes.

(M) Water waste prohibitions.

(N) Water conservation coordinator.

(O) Financial incentives to encourage water conservation.

(P) Ultra-low-flush toilet replacement.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of such savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand management measures, or combination of measures, which offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and noneconomic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the "Memorandum of Understanding Regarding Urban Water Conservation in California," dated September 1991, may submit the annual reports identifying water

demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f) and (g).

SEC. 9. Section 10632 of the Water Code is amended to read:

10632. The plan shall provide an urban water shortage contingency analysis which includes each of the following elements which are within the authority of the urban water supplier:

(a) Stages of action to be undertaken by the urban water supplier in response to water supply shortages, including up to a 50 percent reduction in water supply, and an outline of specific water supply conditions which are applicable to each stage.

(b) An estimate of the minimum water supply available during each of the next three water years based on the driest three-year historic sequence for the agency's water supply.

(c) Actions to be undertaken by the urban water supplier to prepare for, and implement during, a catastrophic interruption of water supplies including, but not limited to, a regional power outage, an earthquake, or other disaster.

(d) Additional, mandatory prohibitions against specific water use practices during water shortages, including, but not limited to, prohibiting the use of potable water for street cleaning.

(e) Consumption reduction methods in the most restrictive stages. Each urban water supplier may use any type of consumption reduction methods in its water shortage contingency analysis that would reduce water use, are appropriate for its area, and have the ability to achieve a water use reduction consistent with up to a 50 percent reduction in water supply.

(f) Penalties or charges for excessive use, where applicable.

(g) An analysis of the impacts of each of the actions and conditions described in subdivisions (a) to (f), inclusive, on the revenues and expenditures of the urban water supplier, and proposed measures to overcome those impacts, such as the development of reserves and rate adjustments.

(h) A draft water shortage contingency resolution or ordinance.

(i) A mechanism for determining actual reductions in water use pursuant to the urban water shortage contingency analysis.

SEC. 10. Section 10633 of the Water Code is amended to read:

10633. The plan shall provide, to the extent available, information on recycled water and its potential for use as a water source in the service area of the urban water supplier. To the extent practicable, the preparation of the plan shall be coordinated with local water, wastewater, groundwater, and planning agencies and shall include all of the following:

(a) A description of the wastewater collection and treatment systems in the supplier's service area, including a quantification of the amount of wastewater collected and treated and the methods of wastewater disposal.

(b) A description of the recycled water currently being used in the supplier's service area, including, but not limited to, the type, place, and quantity of use.

(c) A description and quantification of the potential uses of recycled water, including, but not limited to, agricultural irrigation, landscape irrigation, wildlife habitat enhancement, wetlands, industrial reuse, groundwater recharge, and other appropriate uses, and a determination with regard to the technical and economic feasibility of serving those uses.

(d) The projected use of recycled water within the supplier's service area at the end of 5, 10, 15, and 20 years.

(e) A description of actions, including financial incentives, which may be taken to encourage the use of recycled water, and the projected results of these actions in terms of acre-feet of recycled water used per year.

(f) A plan for optimizing the use of recycled water in the supplier's service area, including actions to facilitate the installation of dual distribution systems and to promote recirculating uses.

SEC. 11. Article 2.5 (commencing with Section 10635) is added to Chapter 3 of Part 2.6 of Division 6 of the Water Code, to read:

Article 2.5. Water Service Reliability

10635. (a) Every urban water supplier shall include, as part of its urban water management plan, an assessment of the reliability of its water service to its customers during normal, dry, and multiple dry water years. This water supply and demand assessment shall compare the total water supply sources available to the water supplier with the total projected water use over the next 20 years, in five-year increments, for a normal water year, a single dry water year, and multiple dry water years. The water service reliability assessment shall be based upon the information compiled pursuant to Section 10631, including available data from the state, regional, or local agency population projections within the service area of the urban water supplier.

(b) The urban water supplier shall provide that portion of its urban water management plan prepared pursuant to this article to any city or county within which it provides water supplies within 60 days of the submission of its urban water management plan.

(c) Nothing in this article is intended to create a right or entitlement to water service or any specific level of water service.

(d) Nothing in this article is intended to change existing law concerning an urban water supplier's obligation to provide water service to its existing customers or to any future, potential customers.

SEC. 12. Section 10641 of the Water Code is amended to read:

10641. An urban water supplier required to prepare a plan may consult with, and obtain comments from, any public agency or state

agency or any person who has special expertise with respect to water demand management methods and techniques.

SEC. 13. Section 10642 of the Water Code is amended to read:

10642. Each urban water supplier shall encourage the active involvement of diverse social, cultural, and economic elements of the population within the service area prior to and during the preparation of the plan. Prior to adopting a plan, the urban water supplier shall make the plan available for public inspection and shall hold a public hearing thereon. Prior to the hearing, notice of the time and place of hearing shall be published within the jurisdiction of the publicly owned water supplier pursuant to Section 6066 of the Government Code. A privately owned water supplier shall provide an equivalent notice within its service area. After the hearing, the plan shall be adopted as prepared or as modified after the hearing.

SEC. 14. Section 10644 of the Water Code is amended to read:

10644. (a) An urban water supplier shall file with the department a copy of its plan no later than 30 days after adoption. Copies of amendments or changes to the plans shall be filed with the department within 30 days after adoption.

(b) The department shall prepare and submit to the Legislature, on or before December 31, in the years ending in six and one, a report summarizing the status of the plans adopted pursuant to this part. The report prepared by the department shall identify the outstanding elements of the individual plans. The department shall provide a copy of the report to each urban water supplier that has filed its plan with the department. The department shall also prepare reports and provide data for any legislative hearings designed to consider the effectiveness of plans submitted pursuant to this part.

SEC. 15. Section 10650 of the Water Code is amended to read:

10650. Any actions or proceedings to attack, review, set aside, void, or annul the acts or decisions of an urban water supplier on the grounds of noncompliance with this part shall be commenced as follows:

(a) An action or proceeding alleging failure to adopt a plan shall be commenced within 18 months after that adoption is required by this part.

(b) Any action or proceeding alleging that a plan, or action taken pursuant to the plan, does not comply with this part shall be commenced within 90 days after filing of the plan or amendment thereto pursuant to Section 10644 or the taking of that action.

SEC. 16. Section 10652 of the Water Code is amended to read:

10652. The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to the preparation and adoption of plans pursuant to this part or to the implementation of actions taken pursuant to Section 10632. Nothing in this part shall be interpreted as exempting from the California Environmental Quality Act any project that would significantly affect water supplies for fish and wildlife, or any

project for implementation of the plan, other than projects implementing Section 10632, or any project for expanded or additional water supplies.

SEC. 17. Section 10653 of the Water Code is amended to read:

10653. The adoption of a plan shall satisfy any requirements of state law, regulation, or order, including those of the State Water Resources Control Board and the Public Utilities Commission, for the preparation of water management plans or conservation plans; provided, that if the State Water Resources Control Board or the Public Utilities Commission requires additional information concerning water conservation to implement its existing authority, nothing in this part shall be deemed to limit the board or the commission in obtaining that information. The requirements of this part shall be satisfied by any urban water demand management plan prepared to meet federal laws or regulations after the effective date of this part, and which substantially meets the requirements of this part, or by any existing urban water management plan which includes the contents of a plan required under this part.

SEC. 18. Section 10656 of the Water Code is amended to read:

10656. An urban water supplier that does not prepare, adopt, and submit its urban water management plan to the department in accordance with this part, is ineligible to receive drought assistance from the state until the urban water management plan is submitted pursuant to Article 3 (commencing with Section 10640) of Chapter 3.

SEC. 19. This act does not apply to any urban water management plan due before January 1, 1996.

CHAPTER 855

An act to amend Section 40728.5 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 40728.5 of the Health and Safety Code is amended to read:

40728.5. (a) Whenever a district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, that agency shall, to the extent data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation. The district board shall actively consider the socioeconomic impact of regulations and make a good faith effort to

minimize adverse socioeconomic impacts, as defined below. This section does not apply to the adoption, amendment, or repeal of any rule or regulation that results in any less restrictive emissions limit if the action does not interfere with the district's adopted plan to attain ambient air quality standards, or does not result in any significant increase in emissions.

(b) For purposes of this section, "socioeconomic impact" means the following:

(1) The type of industries or business, including small business, affected by the rule or regulation.

(2) The impact of the rule or regulation on employment and the economy of the region affected by the adoption of the rule or regulation.

(3) The range of probable costs, including costs to industry or business, including small business, of the rule or regulation.

(4) The availability and cost-effectiveness of alternatives to the rule or regulation being proposed or amended.

(5) The emission reduction potential of the rule or regulation.

(6) The necessity of adopting, amending, or repealing the rule or regulation to attain state and federal ambient air standards pursuant to Chapter 10 (commencing with Section 40910).

(c) This section does not apply to any district with a population of less than 500,000 persons.

(d) Upon the approval by a majority vote of the district board, a county district is not required to include the analysis specified in paragraphs (2) and (4) of subdivision (b) in any assessment of socioeconomic impacts for any rule or regulation that only adopts a requirement that is substantially similar to, or is required by, a state or federal statute, regulation, or applicable formal guidance document. Examples of state or federal formal guidance documents include, but are not limited to, federal Control Techniques Guidelines, state and federal reasonably available control technology determinations, state best available retrofit control technology determinations, and state air toxic control measures.

CHAPTER 856

An act to add Section 40714.5 to the Health and Safety Code, relating to air pollution.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 40714.5 is added to the Health and Safety Code, to read:

40714.5. (a) The Legislature hereby finds and declares all of the following:

(1) Because of policy considerations, certain sources of air pollution are exempt from district permitting requirements or are not otherwise controlled by districts.

(2) Emissions from some of these sources can be reduced through cost-effective measures, thereby creating additional emission reduction credits.

(3) An increased supply of emission reduction credits is beneficial to local economies.

(4) The purpose of this section is to provide an incentive to generate additional and fully valued emission reduction credits by encouraging emission reductions from these sources without subjecting them to a district permitting process.

(b) (1) With respect to any emission reduction that occurred since January 1, 1991, or occurs at any time in the future at a source that was and remains exempt from district rules and regulations, the district shall grant emission reduction credits or marketable trading credits without any discount or reduction in the quantity of the emissions reduced at the source unless otherwise provided by law. Emission reduction credits or marketable trading credits issued by the district for those exempt sources may be reduced only when applied to new source review permitting of other stationary sources, or according to any applicable requirement of a marketable trading credit program.

(2) Any credits issued by a district pursuant to this subdivision shall meet all of the requirements of state and federal law, including, all of the following:

(A) That the credits do not result in the crediting of air emissions which are already contemporaneously required by an emission control measure in a plan necessary to achieve state and federal ambient air standards.

(B) That the credits do not provide for an additional discount of credits solely as a result of emission reduction credits trading if a district has already discounted the credit as part of its process of identifying and granting those credits to sources.

(C) That the credits do not, in any manner, result in double-counting of emission reductions.

(D) That but not limited to, the credits be permanent, enforceable, quantifiable, and surplus.

(3) Until January 1, 1999, this subdivision applies only to sources within the boundaries of the south coast district or in Ventura County. On and after January 1, 1999, this subdivision applies statewide.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level

of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 857

An act to add Sections 771.01 and 771.02 to the Insurance Code, relating to insurance.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 771.01 is added to the Insurance Code, to read:

771.01. No person making a loan of money on the security of residential real property shall reject or refuse to accept a policy of fire and casualty insurance underwritten by an insurer chosen by the borrower for any reason that the lender would not impose on an insurer chosen by the lender when the borrower requests the lender to obtain the insurance. This section applies to a lender's rejection or refusal to accept a policy of fire and casualty insurance due to, but not limited to, terms of coverage, conditions of payment, or financial rating of the insurer.

SEC. 2. Section 771.02 is added to the Insurance Code, to read:

771.02. When a lender or purchaser of a mortgage on real property has required and obtained a copy of the insurance policy covering that real property, it shall be responsible for providing a copy of that insurance policy or other evidence of insurance acceptable to the purchaser to a subsequent purchaser of the mortgage, servicing agent, or insurance tracking service with whom the lender or purchaser of the mortgage subsequently contracts. A copy of the policy or other evidence of insurance shall be provided so that the subsequent purchaser, servicing agent, or insurance tracking service may verify that the borrower has obtained or is maintaining insurance required by the mortgage. This section does not abrogate the responsibility of an insurer, agent, or broker to provide annually, if requested, a copy of the insurance policy directly to the lender or purchaser of the mortgage named as an additional loss payee or lienholder at an address provided by the lender or purchaser of the mortgage.

CHAPTER 858

An act to amend Section 40454 of the Health and Safety code, relating to air pollution.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 40454 of the Health and Safety Code is amended to read:

40454. (a) Notwithstanding Section 40457, 40716, or 40717, or subdivision (c) of Section 40717.5, the south coast district shall not adopt or enforce any rule or regulation that would require any employer to submit a trip reduction plan.

(b) The south coast district may require employers with 100 or more employees at a single worksite to provide ride-matching information and transit information to employees at that worksite.

CHAPTER 859

An act to amend Sections 14016.5, 14088.05, 14088.22, 14089, 14301, 14304, and 14408 of, and to add Sections 14087.305, 14088.23, and 14464 to, the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 14016.5 of the Welfare and Institutions Code is amended to read:

14016.5. (a) At the time of determining or redetermining the eligibility of a Medi-Cal or aid to families with dependent children (AFDC) applicant or beneficiary who resides in an area served by a managed health care plan or pilot program in which beneficiaries may enroll, each applicant or beneficiary shall personally attend a presentation at which the applicant or beneficiary is informed of the managed care and fee-for-service options available regarding methods of receiving Medi-Cal benefits. The county shall ensure that each beneficiary or applicant attends this presentation.

(b) The health care options presentation described in subdivision (a) shall include all of the following elements:

(1) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in the fee-for-service sector.

(2) Each beneficiary or eligible applicant shall be provided with the name, address, and telephone number of each primary care provider, by specialty, or clinic participating in each prepaid managed health care plan, pilot project, or fee-for-service case management provider option. The name, address, and telephone number of each specialist participating in each prepaid managed care health plan, pilot project, or fee-for-service case management provider option shall be made available by either contacting the health care options contractor or the prepaid managed care health plan, pilot project, or fee-for-service case management provider.

(3) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in a managed care option, if his or her treating provider is a primary care provider contracting with any of the prepaid managed health care plans, pilot projects, or fee-for-service case management provider options available, has available capacity, and agrees to continue to treat that beneficiary or applicant.

(4) In areas specified by the director, each beneficiary or eligible applicant shall be informed that if he or she fails to make a choice, or does not certify that he or she has an established relationship with a primary care provider or clinic, he or she shall be assigned to, and enrolled in, a prepaid managed health care plan, pilot projects, or fee-for-service case management provider.

(c) No later than 30 days following the date a Medi-Cal or AFDC beneficiary or applicant is determined eligible, the beneficiary or applicant shall indicate his or her choice in writing, as a condition of coverage for Medi-Cal benefits, of either of the following health care options:

(1) To obtain benefits by receiving a Medi-Cal card, which may be used to obtain services from individual providers, that the beneficiary would locate, who choose to provide services to Medi-Cal beneficiaries.

The department may require each beneficiary or eligible applicant, as a condition for electing this option, to sign a statement certifying that he or she has an established patient-provider relationship, or in the case of a dependent, the parent or guardian shall make that certification. This certification shall not require the acknowledgment or guarantee of acceptance, by any indicated Medi-Cal provider or health facility, of any beneficiary making a certification under this section.

(2) (A) To obtain benefits by enrolling in a prepaid managed health care plan, pilot program, or fee-for-service case management provider that has agreed to make Medi-Cal services readily available to enrolled Medi-Cal beneficiaries.

(B) At the time the beneficiary or eligible applicant selects a prepaid managed health care plan, pilot project, or fee-for-service case management provider, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in

writing, his or her choice of primary care provider contracting with the selected prepaid managed health care plan, pilot project, or fee-for-service case management provider.

(d) (1) In areas specified by the director, a Medi-Cal or AFDC beneficiary or eligible applicant who does not make a choice, or who does not certify that he or she has an established relationship with a primary care provider shall be assigned to and enrolled in an appropriate Medi-Cal managed care plan, pilot project, or fee-for-service case management provider providing service within the area in which the beneficiary resides.

(2) If it is not possible to enroll the beneficiary under a Medi-Cal managed care plan or pilot project or a fee-for-service case management provider because of a lack of capacity or availability of participating contractors, the beneficiary shall be provided with a Medi-Cal card and informed about fee-for-service primary care providers who do all of the following:

(A) The providers agree to accept Medi-Cal patients.

(B) The providers provide information about the provider's willingness to accept Medi-Cal patients as described in Section 14016.6.

(C) The providers provide services within the area in which the beneficiary resides.

(e) If a beneficiary or eligible applicant does not choose a primary care provider or clinic or does not select any primary care provider who is available, the managed health care plan, pilot project, or fee-for-service case management provider that was selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(f) (1) The managed care plan shall have a valid Medi-Cal contract, adequate capacity, and appropriate staffing to provide health care services to the beneficiary.

(2) The department shall establish standards for all of the following:

(A) The maximum distances a beneficiary is required to travel to obtain primary care services from the managed care plan, fee-for-service managed care provider, or pilot project in which the beneficiary is enrolled.

(B) The conditions under which a primary care service site shall be accessible by public transportation.

(C) The conditions under which a managed care plan, fee-for-service managed care provider, or pilot project shall provide nonmedical transportation to a primary care service site.

(3) In developing the standards required by paragraph (2), the department shall take into account, on a geographic basis, the means of transportation used and distances typically traveled by Medi-Cal beneficiaries to obtain fee-for-service primary care services and the

experience of managed care plans in delivering services to Medi-Cal enrollees. The department shall also consider the provider's ability to render culturally and linguistically appropriate services.

(g) To the extent possible, the arrangements for carrying out subdivision (d) shall provide for the equitable distribution of Medi-Cal beneficiaries among participating managed care plans, fee-for-service case management providers, and pilot projects.

(h) If, under the provisions of subdivision (d), a Medi-Cal beneficiary or applicant does not make a choice or does not certify that he or she has an established relationship with a primary care provider, the person may, at the option of the department, be provided with a Medi-Cal card or be assigned to and enrolled in a managed care plan providing service within the area in which the beneficiary resides.

(i) Any Medi-Cal or AFDC beneficiary who is dissatisfied with the provider or managed care plan, pilot project, or fee-for-service case management provider shall be allowed to select or be assigned to another provider or managed care plan, pilot project, or fee-for-service case management provider.

(j) The department or its contractor shall notify a managed care plan, pilot project, or fee-for-service case management provider when it has been selected by or assigned to a beneficiary. The managed care plan, pilot project, or fee-for-service case management provider that has been selected by, or assigned to, a beneficiary, shall notify the primary care provider or clinic than it has been selected or assigned. The managed care plan, pilot project, or fee-for-service case management provider shall also notify the beneficiary of the managed care plan, pilot project, or fee-for-service case management provider or clinic selected or assigned.

(k) (1) The department shall ensure that Medi-Cal beneficiaries eligible under Title XVI of the Social Security Act are provided with information about options available regarding methods of receiving Medi-Cal benefits as described in subdivision (c).

(2) (A) The director may waive the requirements of subdivisions (c) and (d) until a means is established to directly provide the presentation described in subdivision (a) to beneficiaries who are eligible for the federal Supplemental Security Income for the Aged, Blind, and Disabled Program (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code).

(B) The director may elect not to apply the requirements of subdivisions (c) and (d) to beneficiaries whose eligibility under the Supplemental Security Income program is established before January 1, 1994.

(*l*) In areas where there is no prepaid managed health care plan or pilot program which has contracted with the department to provide services to Medi-Cal beneficiaries, and where no other enrollment requirements have been established by the department,

no explicit choice need be made, and the beneficiary or eligible applicant shall receive a Medi-Cal card.

(m) The following definitions contained in this subdivision shall control the construction of this section, unless the context requires otherwise:

(1) "Applicant," "beneficiary," and "eligible applicant," in the case of a family group, means any person with legal authority to make a choice on behalf of dependent family members.

(2) "Fee-for-service case management provider" means a provider enrolled and certified to participate in the Medi-Cal fee-for-service case management program the department may elect to develop in selected areas of the state with the assistance of and in cooperation with California physician providers and other interested provider groups.

(3) "Managed health care plan" and "managed care plan" mean a person or entity operating under a Medi-Cal contract with the department under this chapter or Chapter 8 (commencing with Section 14200) to provide, or arrange for, health care services for Medi-Cal beneficiaries as an alternative to the Medi-Cal fee-for-service program that has a contractual responsibility to manage health care provided to Medi-Cal beneficiaries covered by the contract.

(n) This section shall be implemented in a manner consistent with any federal waiver required to be obtained by the department in order to implement this section.

SEC. 2. Section 14087.305 is added to the Welfare and Institutions Code, to read:

14087.305. (a) In areas specified by the director for expansion of the Medi-Cal managed care program under Section 14087.3 and where the department is contracting with a prepaid health plan that is contracting with, governed, owned or operated by a county board of supervisors, a county special commission or county health authority authorized by Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.96, a Medi-Cal or Aid to Families with Dependent Children (AFDC) applicant or beneficiary shall be informed of the managed care options available regarding methods of receiving Medi-Cal benefits. The county shall ensure that each beneficiary is informed of these options and informed that a health care options presentation is available.

(b) The managed care options information described in subdivision (a) shall include the following elements:

(1) Each beneficiary or eligible applicant shall be provided with the name, address, and telephone number of each primary care provider, by specialty, or clinic, participating in each prepaid health plan option. The name, address, and telephone number of each specialist participating in each prepaid health plan shall be made available by contacting the health care options contractor or the prepaid health plan.

(2) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in a managed care option, if his or her treating provider is a primary care provider contracting with any of the prepaid health plan options available and has available capacity and agrees to continue to treat that beneficiary or applicant.

(3) Each beneficiary or eligible applicant shall be informed that if he or she fails to make a choice, he or she shall be assigned to, and enrolled in, a prepaid health plan.

(c) No later than 30 days following the date a Medi-Cal or AFDC beneficiary or applicant is determined eligible for Medi-Cal, the beneficiary shall indicate his or her choice, in writing, from among the available prepaid health plans in the region and his or her choice of primary care provider contracting with the selected prepaid health plan.

(d) At the time the beneficiary or eligible applicant selects a prepaid health plan, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in writing, his or her choice of primary care provider or clinic contracting with the selected prepaid health plan.

(e) In areas specified by the director for expansion of the Medi-Cal managed care program under Section 14087.3, and where the department is contracting with a prepaid health plan that is contracting with, governed, owned or operated by a county board of supervisors, a county special commission or county health authority authorized by Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.96, a Medi-Cal or AFDC beneficiary who does not make a choice of managed care plans, shall be assigned to and enrolled in an appropriate Medi-Cal prepaid health plan providing service within the area in which the beneficiary resides.

(f) If a beneficiary or eligible applicant does not choose a primary care provider or clinic, or does not select any primary care provider who is available, the prepaid health plan that was selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(g) Any Medi-Cal or AFDC beneficiary dissatisfied with the primary care provider or prepaid health plan shall be allowed to select or be assigned to another primary care provider within the same prepaid health plan. In addition, the beneficiary shall be allowed to select or be assigned to another prepaid health plan contracted for pursuant to this article that is in effect for the geographic area in which he or she resides, in accordance with Section 1903 (m) (2) (F) (ii) of the Social Security Act.

(h) The department or its contractor shall notify a prepaid health plan when it has been selected by or assigned to a beneficiary. The prepaid health plan that has been selected by or assigned to a

beneficiary shall notify the primary care provider that has been selected or assigned. The prepaid health plan shall also notify the beneficiary of the prepaid health plan and primary care provider selected or assigned.

(i) (1) The managed health care plan shall have a valid Medi-Cal contract, adequate capacity, and appropriate staffing to provide health care services to the beneficiary.

(2) The department shall establish standards for all of the following:

(A) The maximum distances a beneficiary is required to travel to obtain primary care services from the managed care plan, in which the beneficiary is enrolled.

(B) The conditions under which a primary care service site shall be accessible by public transportation.

(C) The conditions under which a managed care plan shall provide nonmedical transportation to a primary care service site.

(3) In developing the standards required by paragraph (2) the department shall take into account, on a geographic basis, the means of transportation used and distances typically traveled by Medi-Cal beneficiaries to obtain fee-for-service primary care services and the experience of managed care plans in delivering services to Medi-Cal enrollees. The department shall also consider the provider's ability to render culturally and linguistically appropriate services.

(j) To the extent possible, the arrangements for carrying out subdivision (e) shall provide for the equitable distribution of Medi-Cal beneficiaries among participating prepaid health plans, or managed care plans.

(k) This section shall be implemented in a manner consistent with any federal waiver required to be obtained by the department in order to implement this section.

SEC. 3. Section 14088.05 of the Welfare and Institutions Code is amended to read:

14088.05. For purposes of this article, "primary care case management plan" means a primary care provider or other entity who has contracted with the department pursuant to this article.

SEC. 4. Section 14088.22 of the Welfare and Institutions Code is amended to read:

14088.22. Sections 14408, 14409, 14410, and 14411 shall apply to primary care case management plans.

SEC. 5. Section 14088.23 is added to the Welfare and Institutions Code, to read:

14088.23. (a) The department may apply one or more of the following sanctions against any contractor for failure to comply with the requirements of this article, regulations adopted by the department, the contract between the contractor and the department, or for other good cause shown. Good cause includes, but is not necessarily limited to, three repeated and uncorrected findings of serious deficiencies that have the potential to endanger patient

care, as defined by the department in accordance with this section, identified in the medical audits conducted by the department:

(1) Terminate the contract.

(2) Suspend enrollment and marketing activities.

(3) Require the contractor to suspend or terminate personnel of the contractor or to terminate participation by subcontractors specified by the department.

(4) Impose civil penalties not to exceed ten thousand dollars ($10,000) per violation pursuant to regulations adopted by the director. Unless imposed in error, penalties shall not be returned to the plan.

(5) Take other appropriate action as determined necessary by the department.

(b) The department shall give the contractor and any other persons who may be directly interested not less than 30 days' notice of its intention to impose any of the sanctions authorized by this section.

(c) The notice required by subdivision (b) shall be written, and shall specify each requirement that has not been met, the proposed effective date of the sanction or sanctions, and the amount and duration of each proposed sanction.

(d) (1) Within five working days after the receipt of the written notice required by subdivision (b), the contractor may submit notice of its intent to comply with the requirements specified in the written notice.

(2) If the contractor submits the notice of intent authorized by paragraph (1), the department shall allow the contractor to demonstrate its compliance with the requirements specified in the department's written notice, commencing within 30 calendar days from the date of the submission of the notice of intent to comply by the contractor. Within 15 days following the completion of the 30-day compliance correction period, the department shall review the corrective actions taken by the contractor and, if appropriate, approve those actions.

(3) If a contractor subject to notice to apply sanctions under subdivision (b) does not demonstrate appropriate corrective compliance within the 30-day corrective action period or does not submit a notice of intent to comply with the requirements specified in the notice required by subdivision (b), the department shall notify the contractor, in writing, of the effective date and terms of the sanction or sanctions applied pursuant to this section.

(4) A contractor may appeal sanctions applied pursuant to this section to the department within 15 working days after the notice of the effective date of the sanctions has been provided pursuant to paragraph (3), setting forth relevant facts and arguments. The department shall grant or deny the appeal within 30 calendar days after receiving the appeal.

(e) The department may collect civil penalties imposed pursuant to this section by withholding the amount of the penalty from capitation payments owed by the department to the contractor.

SEC. 6. Section 14089 of the Welfare and Institutions Code is amended to read:

14089. (a) The purpose of this article is to provide a comprehensive program of managed health care plan services to Medi-Cal recipients residing in clearly defined geographical areas. It is, further, the purpose of this article to create maximum accessibility to health care services by permitting Medi-Cal recipients the option of choosing from among two or more managed health care plans or fee-for-service managed case arrangements, including, but not limited to, health maintenance organizations, prepaid health plans, primary care case management plans. Independent practice associations, health insurance carriers, private foundations, and university medical centers systems, not-for-profit clinics, and other primary care providers, may be offered as choices to Medi-Cal recipients under this article if they are organized and operated as managed care plans, for the provision of preventive managed health care plan services.

(b) The negotiator may seek proposals and then shall contract based on relative costs, extent of coverage offered, quality of health services to be provided, financial stability of the health care plan or carrier, recipient access to services, cost-containment strategies, peer and community participation in quality control, emphasis on preventive and managed health care services and the ability of the health plan to meet all requirements for both of the following:

(1) Certification, where legally required, by the Commissioner of Corporations and the Insurance Commissioner.

(2) Compliance with all of the following:

(A) The health plan shall satisfy all applicable state and federal legal requirements for participation as a Medi-Cal managed care contractor.

(B) The health plan shall meet any standards established by the department for the implementation of this article.

(C) The health plan receives the approval of the department to participate in the pilot project under this article.

(c) (1) (A) The proposals shall be for the provision of preventive and managed health care services to specified eligible populations on a capitated, prepaid or postpayment basis.

(B) Enrollment in a Medi-Cal managed health care plan under this article shall be voluntary for beneficiaries eligible for the federal Supplemental Security Income for the Aged, Blind, and Disabled Program (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code).

(2) The cost of each program established under this section shall not exceed the total amount which the department estimates it

would pay for all services and requirements within the same geographic area under the fee-for-service Medi-Cal program.

(d) The department shall enter into contracts pursuant to this article, and shall be bound by the rates, terms, and conditions negotiated by the negotiator.

(e) (1) An eligible beneficiary shall be entitled to enroll in any health care plan contracted for pursuant to this article that is in effect for the geographic area in which he or she resides. Enrollment shall be for a minimum of six months. Contracts entered into pursuant to this article shall be for at least one but no more than three years. The director shall make available to recipients information summarizing the benefits and limitations of each health care plan available pursuant to this section in the geographic area in which the recipient resides.

(2) No later than 30 days following the date a Medi-Cal or AFDC recipient is informed of the health care options described in paragraph (1) of subdivision (e), the recipient shall indicate his or her choice in writing of one of the available health care plans and his or her choice of primary care provider or clinic contracting with the selected health care plan.

(3) The health care options information described in paragraph (1) of subdivision (e) shall include the following elements:

(A) Each beneficiary or eligible applicant shall be provided with the name, address, and telephone number of each primary care provider, by specialty, or clinic participating in each health care plan. The name, address, and telephone number of each specialist participating in each health care plan shall be made available by contacting the health care options contractor or the health care plan.

(B) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in a managed care option, if his or her treating provider is a primary care provider contracting with any of the health plans available and has the available capacity and agrees to continue to treat that beneficiary or eligible applicant.

(C) Each beneficiary or eligible applicant shall be informed that if he or she fails to make a choice, he or she shall be assigned to, and enrolled in, a health care plan.

(4) At the time the beneficiary or eligible applicant selects a health care plan, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in writing, his or her choice of primary care provider contracting with the selected health care plan.

(5) Commencing with the implementation of a geographic managed care project in a designated county, a Medi-Cal or AFDC beneficiary who does not make a choice of health care plans in accordance with paragraph (2), shall be assigned to and enrolled in an appropriate health care plan providing service within the area in which the beneficiary resides.

(6) If a beneficiary or eligible applicant does not choose a primary care provider or clinic, or does not select any primary care provider who is available, the health care plan selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(7) Any Medi-Cal or AFDC beneficiary dissatisfied with the primary care provider or health care plan shall be allowed to select or be assigned to another primary care provider within the same health care plan. In addition, the beneficiary shall be allowed to select or be assigned to another health care plan contracted for pursuant to this article that is in effect for the geographic area in which he or she resides in accordance with Section 1903(m) (2) (F) (ii) of the Social Security Act.

(8) The department or its contractor shall notify a health care plan when it has been selected by or assigned to a beneficiary. The health care plan that has been selected or assigned by a beneficiary shall notify the primary care provider that has been selected or assigned. The health care plan shall also notify the beneficiary of the health care plan and primary care provider selected or assigned.

(9) This section shall be implemented in a manner consistent with any federal waiver that is required to be obtained by the department to implement this section.

(f) A participating county may include within the plan or plans providing coverage pursuant to this section, employees of county government, and others who reside in the geographic area and who depend upon county funds for all or part of their health care costs.

(g) The negotiator and the department shall establish pilot projects to test the cost-effectiveness of delivering benefits as defined in subdivisions (a) through (f).

(h) The California Medical Assistance Commission shall evaluate the cost-effectiveness of these pilot projects after one year of implementation. Pursuant to this evaluation the commission may either terminate or retain the existing pilot projects.

(i) Funds may be provided to prospective contractors to assist in the design, development, and installation of appropriate programs. The award of these funds shall be based on criteria established by the department.

(j) In implementing this article, the department may enter into contracts for the provision of essential administrative and other services. Contracts entered into under this subdivision may be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. These contracts shall have no force and effect unless approved by the Department of Finance.

SEC. 7. Section 14301 of the Welfare and Institutions Code is amended to read:

14301. (a) The department shall determine, by actuarial methods, prospective per capita rates of payment for services provided under this chapter for Medi-Cal beneficiaries enrolled in a prepaid health plan. The rates of payment shall be determined annually, shall be effective no later than either the first day of July each year, or another date chosen by the department, and shall not exceed the total per capita amount (including cost of administration) which the department estimates (with appropriate adjustments to provide actuarial equivalence) would be payable for all services and requirements covered under the prepaid health plan contract if all such services and requirements were to be furnished to Medi-Cal beneficiaries under the fee-for-service Medi-Cal program provided for by Chapter 7 (commencing with Section 14000).

In the event that there is any delay in the payment of the new annual rates determined pursuant to this subdivision, continued payment to the prepaid health plan of the rate in effect at the time the delay occurred shall be interim payment only, and shall be subject to increase or decrease, as the case may be, to the level of the new annual rates effective as of either the first day of July or the date chosen by the department.

Notwithstanding the foregoing provision, in the event that a contract amendment providing for the new annual rates has been executed by the department and a prepaid health plan, but has not yet received the approval of all required control agencies and departments by the end of the first month following the effective date of the new rate, payment of the new annual rates shall commence no later than the first day of the second month following the effective date of the new rate. Contract amendments providing for the new annual rates shall provide that the prepaid health plan contractor agrees that by accepting payment of the new annual rates prior to final approval, such contractor stipulates to a confession of judgment for any amounts received in excess of the final approved rate. If the final approved rates differ from the rates set forth in such amendments, any underpayment by the state shall be paid by the department to the prepaid health plan within 30 days after final approval of such rates. Any overpayment by the state shall be recaptured by the state withholding the amount due from the prepaid health plan's next capitation check. If the amount to be withheld from subsequent capitation checks exceeds 25 percent of the appropriate capitation payment for that month, amounts up to 25 percent shall be withheld from each successive monthly capitation payment until such deficiencies are recovered by the state.

The contract shall provide the specific per capita rates, to be determined by sound actuarial methods on the basis of age, sex, and aid categories, which the state shall pay the prepaid health plan each month for each beneficiary enrolled in the prepaid health plan, a detailed description of the specific actuarial method or methods and assumptions used in determining per capita rates, and a summary of

the data base, including costs and inflation assumptions and utilization rates, which was used to determine per capita rates. In addition, the director shall engage and rely upon the services of an actuary or consulting actuary in determining prospective per capita rates.

(b) Any prepaid health plan with an operating experience and scale of operation deemed by the department to be insufficient to justify the application of an actuarially determined per capita rate, shall be reimbursed on a cost basis up to the fee-for-service maximum for services provided until such time as the director determines that a per capita method is reasonable, but not to exceed a period of one year. For purposes of this section, costs shall be net of intercompany profits in those circumstances where any of the following persons have a substantial financial interest, as defined by Section 14478, in any vendor to the prepaid health plan or any vendor to a subcontractor of the plan:

(1) Any person also having a substantial financial interest in the plan.

(2) Any director, officer, partner, trustee or employee of the plan.

(3) Any member of the immediate family of any person designated in paragraph (1) or (2).

(c) The obligations of a prepaid health plan shall be changed only by contract or contract amendment. Any such change may be made during a contract term or at the time of contract renewal, where there is a change in obligations required by federal or state law or regulation, or required by a change in the interpretation or implementation of any such law or regulation. If any such change in obligations occurs which affects the cost to a prepaid health plan of performing under the terms of its contract, then the per capita rates under the contract may be redetermined in the manner provided by subdivision (a) to reflect such change. During such period of time as is required to redetermine the per capita rates, payment to a prepaid health plan of the per capita rates in effect at the time such change occurred shall be considered interim payments and shall be subject to increase or decrease, as the case may be, effective as of the date on which such change is effective.

(d) The obligations of a prepaid health plan shall be changed only by contract or contract amendment wherein payment for the changes, whether payment results in an increase or decrease in the prior per capita rates paid to a prepaid health plan, shall be determined in accordance with this section and paid to affected prepaid health plans.

(e) Nothing contained in this section shall be construed as removing from a prepaid health plan the risk of beneficial or adverse effects, including inflation, which normally result from contracting to furnish health services.

(f) Per capita rates of payment for services provided to Medi-Cal beneficiaries enrolled in prepaid health plans or Medi-Cal managed

care plans contracting in areas specified by the director for expansion of the Medi-Cal managed care program under Section 14087.3 or contracting under Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, 14087.96, 14089, and 14089.05 shall be paid by the state effective the date a beneficiary's enrollment takes effect. A primary care provider or clinic contracting with a prepaid health plan or a Medi-Cal managed care plan on a capitation basis and whose assignment to or selection by a beneficiary has been confirmed by the plan shall be paid capitation payments effective the date of the beneficiary's enrollment. However, a primary care provider whose assignment to or selection by a beneficiary was not confirmed by the plan on the date of the beneficiary's enrollment, but is later confirmed by the plan, shall be paid capitation payments effective no later than 30 days after the beneficiary's enrollment. The prepaid health plan or Medi-Cal managed care plan shall be financially responsible for all Medi-Cal services covered under the contract with the department for any newly enrolled beneficiary until that beneficiary has a confirmed assignment to a primary care provider or clinic. This subdivision shall not apply when a beneficiary requests a change in primary care provider after initial selection or assignment.

SEC. 8. Section 14304 of the Welfare and Institutions Code is amended to read:

14304. (a) The director shall terminate a contract with a prepaid health plan or a Medi-Cal managed health care plan if he or she finds that the standards prescribed in this chapter, the regulations, or the contract are not being complied with, that claims accrued or to accrue have not or will not be recompensed, or for other good cause shown. Good cause includes, but is not necessarily limited to, three repeated and uncorrected findings of serious deficiencies that have the potential to endanger patient care, as defined by the department in accordance with this section, identified in the medical audits conducted by the department. Except in the event that the director determines there is an immediate threat to the health of Medi-Cal beneficiaries enrolled in the plan, the Office of Administrative Hearings, at the request of the plan, shall hold a public hearing to commence 30 days after notice of intent to terminate the contract has been received by the plan. The department shall present evidence at the hearing showing good cause for the termination. The Office of Administrative Hearings shall provide its written recommendation to the department on the termination of the contract within 30 days after conclusion of the hearing. Reasonable notice of the hearing shall be given to the plan, to Medi-Cal beneficiaries enrolled in the plan, and others who may be directly interested, including such other persons and organizations as the director may deem necessary. The notice shall state the effective date of, and the reason for, the termination.

(b) In lieu of contract termination specified in subdivision (a), the director shall have the power and authority to take one or more of the following sanctions against a contractor for noncompliance with the findings by the director as specified in subdivision (a):

(1) Suspend enrollment and marketing activities.

(2) Require the contractor to suspend or terminate contractor personnel or subcontractors.

(3) Impose civil penalties not to exceed ten thousand dollars ($10,000) per violation pursuant to regulations adopted by the director. Unless imposed in error, penalties shall not be returned to the plan.

(4) Take other appropriate action as determined necessary by the department.

The director shall give reasonable notice of his or her intention to apply any of the sanctions authorized by this subdivision to the plan and others who may be directly interested, including such other persons and organizations as the director may deem necessary. The notice shall include the effective date, the duration of, and the reason for each sanction proposed by the director.

(c) Notwithstanding subdivision (b), the director shall terminate a contract with a prepaid health plan which the United States Secretary of Health and Human Services has determined does not meet the requirements for participation in the Medicaid Program contained in Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(d) Proceedings to impose the sanctions in subdivision (b) shall be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The director may collect civil penalties by withholding the amount from capitation owed to the plan.

Proceedings to terminate a prepaid health plan contract under subdivisions (a) and (c) shall be governed by the provisions of subdivision (a).

SEC. 9. Section 14408 of the Welfare and Institutions Code is amended to read:

14408. (a) Except as otherwise prohibited by law, a contractor which has entered into a contract with the department pursuant to this chapter may make the benefits known to potential enrollees by methods approved by the department.

(b) No prepaid health plan, marketing representative, or marketing organization shall engage in marketing activities prior to written submittal to and approval by the department. All marketing activities, procedures, methods, and places in which any activities will be conducted shall be explicitly described in a marketing plan and approved by the department prior to being used by a prepaid health plan, marketing representative, or marketing organization. The marketing plan shall be updated and submitted for renewed approval on an annual basis. The department may approve,

disapprove, or withdraw approval of any marketing activity or procedure. The department shall require the discontinuance of any marketing activity or procedure for which the department withdraws approval. The conduct of activities or procedures not included in an approved marketing plan shall constitute a violation of this article and be subject to sanctions in accordance with Section 14409.

The prepaid health plan shall be responsible for all presentations by their marketing representatives and for their ethical and professional conduct. The department may withdraw certification for participation in the program from, and impose marketing sanctions specified in Section 14409, as applicable, on, marketing representatives.

(c) The marketing plan shall meet the standards established by the department. The marketing plan shall include, but not be limited to, an explicit description of the specific marketing activities, the method of identifying individual enrollments by marketing representative, and formal measures to monitor performance of marketing representatives and verify both of the following:

(1) The prepaid health plan's marketing activities and practices do not violate subdivision (a) of Section 14409.

(2) Beneficiaries receive complete and accurate information about the benefits and limitations of receiving health care services through the prepaid plan in a manner that considers the beneficiary's level of comprehension.

(d) Each time a marketing representative presents information about the benefits of prepaid health plan enrollment to a beneficiary in order to encourage the beneficiary to enroll, the marketing representative shall leave with the beneficiary printed information identifying the marketing representative by name and prepaid health plan represented.

(e) All printed or illustrated material prepared by the prepaid health plan for dissemination to enrollees or to prospective enrollees shall be submitted to the department prior to such dissemination. The department shall acknowledge receipt of the printed or illustrated material within five days, and shall approve or disapprove the material for dissemination within 60 days after the date of notification that the material has been received. The department may withdraw approval of the material previously approved and order its dissemination discontinued. Where the department notifies the prepaid health plan of its disapproval or withdrawal of approval, the prepaid health plan shall have the right to meet and confer with the director or his or her designee and demonstrate the purpose and reasonable basis for the distribution of such material to enrollees and potential enrollees.

(f) (1) Any form of door-to-door or in-person marketing that coerces or misleads beneficiaries or selectively enrolls beneficiaries on the basis of their health status is unlawful. In addition, on or after

July 1, 1996, door-to-door solicitation of Medi-Cal enrollees shall not be permitted.

(2) On or after July 1, 1996, the health care options presentation required by Sections 14016.5 and 14016.6 or the health care options information required by Sections 14087.305 and 14089 shall be fully operational in counties specified by the director for expansion of the Medi-Cal managed care program or in counties where prepaid health plans are contracting with the department pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, 14087.96, 14089, and 14089.05. In these counties, on or after July 1, 1996, no enrollment of beneficiaries by prepaid health plans shall occur during in-person marketing activities or during health fairs under paragraph (5) of subdivision (f). Enrollment shall be exclusively performed and transmitted pursuant to the program required by Sections 14016.5, 14016.6 14087.305, and 14089.

(3) In the event the health care options presentation required by Sections 14016.5 and 14016.6 is not fully operational or the health care options information required by Sections 14087.305 and 14089 is not fully available, as specified in paragraph (2) of subdivision (f), the department shall perform the enrollment-only functions until the health care options presentation or information is fully operational or available.

(4) Nothing in this section shall preclude a prepaid health plan from responding to inquiries initiated by beneficiaries or potential beneficiaries.

(5) Until July 1, 1996, a prepaid health plan may participate in an organized community or neighborhood health fair in a public place only if two or more prepaid health plans are participating, or if the plan is invited by the sponsor of the fair. If there are not two or more prepaid health plans providing services to Medi-Cal beneficiaries in a prepaid health plan's service area, this subdivision shall not apply. On or after July 1, 1996, a prepaid health plan may participate in an organized community or neighborhood health fair in a public place for marketing purposes.

(g) Any prepaid health plan, marketing representative, or marketing organization that violates subdivision (f) shall be subject to the sanctions set forth in subdivision (b) of Section 14409 and shall be guilty of a misdemeanor and subject to a fine of five hundred dollars ($500) or imprisonment in the county jail for six months, or both, for each violation.

(h) The department shall certify each marketing representative prior to participation in the program in accordance with standards established by the department. Continuing certification for participation in the program shall be contingent upon compliance with this article, as well as guidelines and standards adopted by the department, and may be withdrawn upon their violation, as determined by the department. The department may temporarily decertify any marketing representative when that action is necessary

to protect the public welfare or the interests of the Medi-Cal program. Temporary decertification shall be effective immediately upon written notice to the marketing representative and the managed care contractor, and shall remain in effect until the department has made a determination on the merits. Temporary decertification shall be canceled unless the department acts to permanently withdraw certification within 60 days.

(j) No prepaid health plan shall employ in any capacity relating to the marketing operations of the plan a marketing representative whose certification has been withdrawn. Marketing representatives shall not be recertified for participation until the cause for withdrawal of certification has been corrected to the satisfaction of the department. Proof of correction shall be the sole responsibility of the marketing representative.

SEC. 10. Section 14464 is added to the Welfare and Institutions Code, to read:

14464. (a) The department may negotiate and establish an individual administrative cost limit in its contracts with each prepaid health plan or Medi-Cal managed care plan contracting under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) providing services to Medi-Cal beneficiary enrollees.

(b) As used in this section, prepaid health plan or Medi-Cal managed care plan "administrative costs" includes net profit or revenue in excess of expenditures, in addition to those items set forth in Section 1300.78 of Title 10 of the California Code of Regulations and those items set forth by the director.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 860

An act to add Section 13823.93 to the Penal Code, relating to evidentiary examinations.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The response of California's health care system to victims of violence, especially women and children, is inconsistent, in terms of both access to services and competence of health care workers. While services provided in some metropolitan centers may be excellent, access to trained medical practitioners is restricted and unevenly distributed throughout the state.

(b) Many rural, midsized counties and geographically large urban areas lack health professionals who are properly trained in providing evidentiary examinations, collection, preservation, and documentation of evidence, and interpretation of findings, and who are experienced in collaborating with law enforcement agencies and investigating social workers. This results in victims being improperly examined and law enforcement agencies lacking critical evidence.

(c) To appropriately respond to the medical care needs of victims of domestic violence, child abuse, elder abuse, and sexual assault, and to provide comprehensive, competent evidentiary examinations for use by law enforcement agencies, it is necessary to take immediate steps to ensure there are appropriately trained medical professionals throughout California.

SEC. 2. Section 13823.93 is added to the Penal Code, to read:

13823.93. (a) For purposes of this section, the following definitions apply:

(1) "Medical personnel" includes physicians, nurse practitioners, physician assistants, and nurses.

(2) To "perform a medical evidentiary examination" means to evaluate, collect, preserve, and document evidence, interpret findings, and document examination results.

(b) Two hospital-based training centers, one in northern California and one in southern California, shall be established through a competitive bidding process, to train medical personnel on how to perform medical evidentiary examinations of child victims of physical or sexual abuse or neglect. The centers also shall provide training for investigative and court personnel involved in dependency and criminal proceedings, on how to interpret the findings of medical evidentiary examinations.

The centers also shall train medical personnel on how to perform medical evidentiary examinations for victims of sexual assault, victims of spousal abuse, and victims of elder abuse.

The training centers shall be established over a two-year period, the center in northern California to be established in the first year and the center in southern California to be established in the second year. In addition, it is the intent of the Legislature that three consultation centers be established in future years, subject to an appropriation being made for that purpose.

(c) Training centers shall have all of the following criteria:

(1) Recognized expertise and experience in providing medical evidentiary examinations for child victims of sexual or physical abuse or neglect, or for sexual assault, elder abuse, and domestic violence victims, or both.

(2) Recognized expertise and experience implementing the protocol established pursuant to Section 13823.5.

(3) History of providing training, including, but not limited to, the clinical supervision of trainees and the evaluation of clinical competency.

(4) Recognized expertise and experience in the use of advanced medical technology in the evaluation of child victims of sexual or physical abuse or neglect, or of sexual assault, elder abuse, and domestic violence victims, or both.

(5) Significant history in working with professionals in the field of criminalistics.

(6) Established relationships with local crime laboratories, clinical laboratories, law enforcement agencies, district attorney's offices, child protective services, victim advocacy programs, and federal investigative agencies.

(7) The capacity for developing a telecommunication network between primary, secondary, and tertiary medical providers.

(8) History of research, particularly involving data bases, in the area of child physical and sexual abuse, sexual assault, elder abuse, or domestic violence.

(d) The training centers shall do all of the following:

(1) Develop and implement a standardized training program for medical personnel.

(2) Develop a telecommunication system network between the training centers and their respective outlying areas, including rural and midsized counties. This service shall provide case consultation to medical personnel, law enforcement, and the courts and provide continuing medical education.

(3) Provide ongoing initial, advanced, and specialized training programs.

(4) Develop guidelines for the reporting and management of child physical abuse and neglect, domestic violence, and elder abuse.

(5) Develop guidelines for evaluating the results of training for the medical personnel performing examinations.

(6) Provide training for law enforcement officers, district attorneys, public defenders, investigative social workers, and judges on medical evidentiary examination procedures and the interpretation of findings. This training shall be developed and implemented in collaboration with the Peace Officers Standards and Training Program, the California District Attorney's Association, the California Peace Officers Association, the California Police Chiefs Association, the California Sexual Assault Investigators Association, the California Welfare Directors Association, the California Coalition

Against Sexual Assault, the Department of Justice, the Office of Criminal Justice Planning, the California State University at Fresno State Welfare Training Program, and the University of California extension programs.

(7) Promote an interdisciplinary approach in the assessment and management of child abuse and neglect, sexual assault, and domestic violence cases.

(8) Provide training in the dynamics of victimization, including, but not limited to, rape trauma syndrome, battered woman syndrome, and the effects of child abuse and neglect and elder abuse. This training shall be provided by individuals who are recognized as experts within their respective disciplines.

CHAPTER 861

An act to amend Sections 21083.8 and 21151.1 of, and to add Section 21083.8.1 to, the Public Resources Code, relating to environmental quality.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 21083.8 of the Public Resources Code is amended to read:

21083.8. (a) For the purposes of this section, the following terms have the following meaning:

(1) "Reuse plan" means an initial plan for the reuse of a military base adopted by a local government or a redevelopment agency in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document.

(2) "Military base" or "base" means any military base or reservation either closed or realigned by, or scheduled for closure or realignment by, the federal government.

(b) If an environmental impact statement on the closure and reuse of a military base has been prepared and filed pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), the lead agency that is responsible for the preparation of an environmental impact report for a reuse plan for the same base may proceed in the following manner:

(1) A notice of the preparation of an environmental impact report on a reuse plan shall be prepared pursuant to either Section 21080.4 or 21080.6 and shall include a description of the reuse plan and a copy of the environmental impact statement. The notice shall indicate that the lead agency intends to utilize the environmental impact statement as a draft environmental impact report and requests

comments on whether, and to what extent, the environmental impact statement provides adequate information to serve as a draft environmental impact report, and what specific additional information, if any, is necessary to comply with this division. The notice shall also indicate the address to which written comments may be sent and the deadline for submitting comments.

(2) Upon the close of the comment period on the notice of preparation, the lead agency may proceed with preparation of the environmental impact report on the reuse plan. The lead agency shall, to the greatest extent feasible, avoid duplication and utilize information in the environmental impact statement consistent with this division. The draft environmental impact report shall consist of all or part of the environmental impact statement and any additional information that is necessary to prepare a draft environmental impact report in compliance with this division.

(3) In all other respects, the environmental impact report for the reuse plan shall be completed in compliance with this division.

(c) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. Section 21083.8.1 is added to the Public Resources Code, to read:

21083.8.1. (a) (1) For purposes of this section, "reuse plan" for a military base or reservation has the same meaning as the term as defined in paragraph (1) of subdivision (a) of Section 21083.8, except that the reuse plan shall also consist of a statement of development policies, include a diagram or diagrams illustrating its provisions, and make the designation required in paragraph (2) of this section.

(2) The reuse plan shall designate the proposed general distribution and general location of development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads and other transportation facilities, infrastructure, and other categories of public and private uses of land.

(b) (1) When preparing and certifying an environmental impact report for a reuse plan, including when utilizing an environmental impact statement pursuant to Section 21083.5, in addition to the procedure authorized pursuant to subdivision (b) of Section 21083.8, the determination of whether the reuse plan may have a significant effect on the environment may be made in the context of the physical conditions which were present at the time that the federal decision became final for the closure or realignment of the base or reservation. The no project alternative analyzed in the environmental impact report shall discuss the existing conditions on the base, as they exist at the time that the environmental impact report is prepared, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved, based on current plans and consistent with available infrastructure and services.

(2) For purposes of this division, all public and private activities taken pursuant to, or in furtherance of, a reuse plan shall be deemed to be a single project. However, further environmental review of any such public or private activity shall be conducted if any of the events specified in Section 21166 have occurred.

(c) Prior to preparing an environmental impact report for which a lead agency chooses to utilize the provisions of this section, the lead agency shall do all of the following:

(A) Hold a public hearing at which is discussed the federal environmental impact statement prepared for, or in the process of being prepared for, the closure of the military base or reservation. The discussion shall include the significant effects on the environment examined in the environmental impact statement, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead agency may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base or reservation. The lead agency may specify particular physical conditions which it will examine in greater detail than were examined in the environmental impact statement. Notice of the hearing shall be given as provided in Section 21092. The hearing may be continued from time to time.

(B) Identify pertinent responsible agencies and trustee agencies and consult with those agencies prior to the public hearing as to the application of their regulatory policies and permitting standards to the proposed baseline for environmental analysis, as well as to the reuse plan and planned future nonmilitary land uses of the base or reservation. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed reuse plan and to submit their comments to the lead agency.

(C) At the close of the hearing, the lead agency shall state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and environmental review process, taking into account the adopted environmental standards of the community, including, but not limited to, the applicable general plan, specific plan, and redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, integrated waste management plans, and county hazardous waste management plans.

(D) At the close of the hearing, the lead agency shall state, in writing, the specific economic or social reasons, including, but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and moderate income housing, and economic continuity, which support the selection of the baseline.

(d) (1) Nothing in this section shall in any way limit the scope of a review or determination of significance of the presence of

hazardous or toxic wastes, substances, or materials including, but not limited to, contaminated soils and groundwater, nor shall the regulation of hazardous or toxic wastes, substances, or materials be constrained by prior levels of activity that existed at the time that the federal agency decision to close the military base or reservation became final.

(2) This section does not apply to any project undertaken pursuant to Chapter 6.5 (commencing with Section 25100) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of the Health and Safety Code, or pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(3) This section may apply to any reuse plan environmental impact report for which a notice of preparation pursuant to subdivision (a) of Section 21092 is issued within one year from the date that the federal record of decision was rendered for the military base or reservation closure or realignment and reuse, or prior to January 1, 1997, whichever is later, if the environmental impact report is completed and certified within five years from the date that the federal record of decision was rendered.

(e) All subsequent development at the military base or reservation site shall be subject to all applicable federal, state, or local laws, including, but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

SEC. 3. Section 21151.1 of the Public Resources Code is amended to read:

21151.1. (a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080, or Section 21080.5 or 21084, or any other provision of law, except as provided in this section, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report or, if appropriate, a modification, addendum, or supplement to an existing environmental impact report, for any project involving any of the following:

(1) (A) The burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, if the project is either of the following:

(i) The construction of a new facility.

(ii) The expansion of an existing facility which burns hazardous waste which would increase its permitted capacity by more than 10 percent.

(B) This paragraph does not apply to any project exclusively burning hazardous waste, for which a final determination under Section 21080.1 has been made prior to July 14, 1989.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety Code.

(4) A base reuse plan as defined in Section 21083.8 or 21083.8.1. The Legislature hereby finds that no reimbursement is required pursuant to Section 6 of Article XIII B of the California Constitution for an environmental impact report for a base reuse plan if an environmental impact report is otherwise required for that base reuse plan pursuant to any other provision of this division.

(b) For purposes of clause (ii) of subparagraph (A) of subparagraph (B) of paragraph (1) of subdivision (a), the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(1) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(2) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance of a hazardous waste facilities permit does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(d) Paragraph (1) of subdivision (a) does not apply to any project which does any of the following:

(1) Exclusively burns digester gas produced from manure or any other solid or semisolid animal waste.

(2) Exclusively burns methane gas produced from a disposal site, as defined in Section 40122, which is used only for the disposal of solid waste, as defined in Section 40191.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(4) Exclusively burns hazardous waste in an incineration unit which is transportable and which is either at a site for not longer than three years or is part of a remedial or removal action. For purposes of this paragraph, "transportable" means any equipment which performs a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations, and which is transported on a vehicle

as defined in Section 66230 of Title 22 of the California Code of Regulations.

(5) Exclusively burns refinery waste in a flare on the site of generation.

(6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment plant.

(7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a supplemental fuel, as part of a research, development, or demonstration project which, consistent with federal regulations implementing the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and which is limited in type and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process; provided, however, that any facility which operated as a research, development, or demonstration project and for which an application is thereafter submitted for a hazardous waste facility permit for operation other than as a research, development, or demonstration project shall be considered a new facility for the burning of hazardous waste and shall be subject to subdivision (a) of Section 21151.1.

(8) Exclusively burns soils contaminated only with petroleum fuels or the vapors from these soils.

(9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a thermal processing unit operated in the absence of open flame, and submits a worst-case health risk assessment of the technology to the Department of Toxic Substances Control for review and distribution to the interested public. This assessment shall be prepared in accordance with guidelines set forth in the Air Toxics Assessment Manual of the California Air Pollution Control Officers Association.

(10) Exclusively burns less than 1,200 pounds per day of medical waste, as defined in Section 25023.2 of the Health and Safety Code, on hospital sites.

(11) Exclusively burns chemicals and fuels as part of firefighter training.

(12) Exclusively conducts open burns of explosives subject to the requirements of the air pollution control district or air quality management district and in compliance with OSHA and Cal-OSHA regulations.

(13) Exclusively conducts onsite burning of less than 3,000 pounds per day of fumes directly from a manufacturing or commercial process.

(14) Exclusively conducts onsite burning of hazardous waste in an industrial furnace that recovers hydrogen chloride from the flue gas if the hydrogen chloride is subsequently sold, distributed in commerce, or used in a manufacturing process at the site where the hydrogen chloride is recovered, and the burning is in compliance

with the requirements of the air pollution control district or air quality management district and the Department of Toxic Substances Control.

(e) Paragraph (1) of subdivision (a) does not apply to any project for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction under Chapter 6 (commencing with Section 25500) of Division 15.

(f) Paragraphs (2) and (3) of subdivision (a) shall not apply if the facility only manages hazardous waste which is identified or listed pursuant to Section 25140 or 25141 on or after January 1, 1992, but not before that date, or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992, but not before that date.

(g) This section does not exempt any project from any other requirement of this division.

(h) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 862

An act to add Part 10.8 (commencing with Section 17920) to Division 1 of Title 1 of the Education Code, relating to air pollution.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Part 10.8. (commencing with Section 17920) is added to Division 1 of Title 1 of the Education Code, to read:

PART 10.8. SCHOOLBUS EMISSIONS REDUCTION FUNDS

17920. Any school district or county office of education may establish and administer a schoolbus emissions reduction fund to receive revenue from public and private sources for the purpose of

purchasing low- or zero-emission schoolbuses to replace, or increase the number of, schoolbuses in the existing school district or county fleet or retrofitting existing schoolbuses to achieve reductions in emissions.

17921. A school district or county office of education that establishes a schoolbus emissions reduction fund may receive revenues from air pollution control district and air quality management district grants, revenues from a city that are granted pursuant to paragraph (1) of subdivision (b) of Section 44243 of the Health and Safety Code, or from any other source. The school district or county office of education shall contribute a majority of the money deposited in its schoolbus emissions reduction fund.

17922. State funds may, upon appropriation by the Legislature, be distributed to the Superintendent of Public Instruction for distribution to districts and county offices of education for the purchase of low- or zero-emission schoolbuses that replace, or increase the number of, schoolbuses in the existing schoolbus fleet or for retrofitting existing schoolbuses to achieve reductions in emissions. State funds that are provided pursuant to this part shall not exceed the amount of funds provided from other sources.

17923. A school district or county office of education may enter into contracts, including multiple year contracts, with private sector individuals, businesses, and other entities for the purpose of receiving revenues to supplement its schoolbus emissions reduction fund in exchange for the issuance to the private sector contributor of emission reduction credits resulting from the purchase by the school district or county office of education of low- or zero-emission schoolbuses or the retrofit of existing schoolbuses. If there are multiple private sector contributors, each of those contributors shall receive a share of the credits allocated in proportion to their contribution, as specified by the school district or county office of education at the time that the parties enter into the agreement.

17924. The Chairperson of the State Air Resources Board and the Superintendent of Public Instruction shall jointly develop guidelines for school district or county office of education use that describe all of the following:

(a) The manner in which school districts or county offices of education may obtain funding from private and public entities for deposit into a school district or county office of education schoolbus emissions reduction fund.

(b) The methods for determining the quantity and allocation of emission reduction credits generated from a new bus that replaces an existing bus or from a new or retrofitted bus that represents an expansion of fleet capacity.

(c) The methods by which school districts or county offices of education located in the South Coast Air Quality Management District may obtain funds from cities pursuant to paragraph (1) of subdivision (b) of Section 44243 of the Health and Safety Code.

17925. Prior to distributing any state funds pursuant to this part, the Superintendent of Public Instruction shall consult with the State Energy Resources Conservation and Development Commission to avoid duplication or overlap with appropriations from the Katz Schoolbus Fund, created pursuant to Section 17911.

17926. Any schoolbus replaced pursuant to this part that meets the federal safety standards established in 1977 shall be offered for sale to school districts to replace schoolbuses that do not meet the federal safety standards, at a purchase price not to exceed the amount of the school district or county office of education's contribution specified in Section 17921, plus appropriate administrative costs. This section shall not apply if the school district or county office of education certifies a continued need for the schoolbus being replaced.

CHAPTER 863

An act to amend Sections 15373.71, 15711, 15712, 15713, 15714, 15721, 63010, 63021, 63022.5, 63023, 63025.1, 63030, 63031, 63032, 63035, 63041, 63052, 63060, 63062, 63063, 63065, 63066, 63067, 63070, 63071, 63072, 63073, 63074, 63075, 63076, 63077, 63078, 63079, 63081, and 63083 of, to add Section 63021.5 to, and to repeal Section 63020 of, the Government Code, relating to economic development and making an appropriation therefor.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 15373.71 of the Government Code is amended to read:

15373.71. (a) The panel may issue bonds, subject to the approval of the board of the California Infrastructure and Economic Development Bank from time to time, in the principal amount that the panel determines is necessary to provide sufficient funds for the purposes specified in this article and for establishment of reserves to secure the bonds and other expenditures of the panel incident to, and necessary or convenient to, issuance of the bonds.

(b) The aggregate principal amount of bonds that may be outstanding at any time pursuant to this section shall not exceed the aggregate principal amount of obligations outstanding pursuant to this article exclusive of bonds issued to refund previously issued bonds of the agency or the panel.

(c) Every issue of bonds shall be revenue obligations of the panel payable only out of moneys in the fund, or held pursuant to a trust

agreement, subject only to any agreements with the holders of particular bonds pledging any particular assets, revenues, or moneys.

(d) Any bonds issued under this article may be secured by a trust agreement, indenture, or resolution by and between the panel and a trustee, which shall be a bank or trust company chartered under the laws of this state or of the United States.

(e) The bonds shall be authorized by resolution or resolutions of the panel, shall be in the form, shall bear the date or dates, and shall mature at the time or times the resolution or resolutions may provide, except that no bond shall mature more than 50 years from the date of its issue. The bonds shall bear interest at the rate or rates, be in the denominations, be in the form, be executed in the manner, be payable in the medium of payment at the place or places within or without the state, be subject to the terms of redemption and contain the terms and conditions the resolution or resolutions may provide. The bonds of the panel shall be sold at public or private sale by the Treasurer at, above, or below the par value, on the terms and conditions and for the consideration the panel shall determine by resolution prior to the sale.

(f) Whenever the panel deems that it will increase the salability or the price of the bonds to obtain, prior to or after sale, a legal opinion, other than that of the Attorney General, as to the validity of the bonds, or as to the exclusion of interest on the bonds from gross income for federal income tax purposes, the agency may obtain a legal opinion, including authorizing the Treasurer to obtain a legal opinion. Payment for the legal services may be made out of the proceeds of the sale of the bonds.

(g) The panel may employ financial consultants, advisers, and accountants necessary in its judgment in connection with the issuance and sale of any bonds of the panel. Payment for these services may be made out of the proceeds of the sale of the bonds.

(h) Notwithstanding Section 13340, if the bond is payable from a fund, amounts necessary to pay debt service for any bonds or notes issued pursuant to this part are hereby appropriated without regard to fiscal years from the fund.

(i) Section 10295 and Sections 10335 to 10382, inclusive, of the Public Contract Code shall not apply to agreements entered into by the panel or the Treasurer in connection with the sale of bonds or notes authorized under this part.

(j) The bonds issued under this article shall be special obligations of the panel secured solely by the revenues received from the loans made pursuant to this article. No bond issued or sold pursuant to this article shall be or become a lien, charge, or liability against the State of California or against its property or funds except to the extent of the pledges expressly made by this article. Every bond issued pursuant to this article shall contain a recital on the face thereof stating that neither the payment of the principal nor any part thereof, nor any interest thereon, constitutes a debt, liability, or general

obligation of the State of California other than as provided in this article. The panel has no power at any time or in any manner to pledge the credit or taxing power of the state or any of its local agencies, other than as provided in this article.

(k) Bonds issued pursuant to this article are a legal investment for any state special or trust fund notwithstanding any provision of law limiting the investments that may be made by the special or trust fund. The bonds of the panel shall be legal investments in which all public officers and public bodies of the state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, savings and loan associations, savings banks and savings associations, investment companies, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds may be used as security for public deposits. The bonds are also securities that may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivision of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is authorized by law, including deposits to secured public funds.

(*l*) Notwithstanding any other provisions of law, this article provides a complete, separate, additional, and alternative method for the doing of the things authorized by this article, and is supplemental and additional to powers conferred by other laws.

SEC. 2. Section 15711 of the Government Code is amended to read:

15711. For the purposes of this part, the following words and terms shall have the following meanings unless the context clearly indicates another or different meaning or intent:

(a) "Authority" means the California Economic Development Financing Authority. For purposes of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4), the authority shall be deemed to be the committee.

(b) "Board" means the board of directors of the California Economic Development Financing Authority.

(c) "Bonds" means bonds, notes, including bond revenue, tax, or grant anticipation notes, commercial paper, floating rate, and variable maturity securities, and any other evidences of indebtedness.

(d) "Executive director" means the executive director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

(e) "Economic development project" means a project providing public benefits through the establishment, expansion, securing,

financing, or operating of an industrial, recreational, research and development, commercial or service enterprise or facility, or community facility, or any parts or combination thereof located within California and including, but not limited to, all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital.

(f) "Lending institution" means any bank or trust company, savings bank, credit union, insurance company, financial institution, Federal National Mortgage Association, Student Loan Marketing Association, nonprofit economic development corporation, or any governmental agency approved by the authority to participate in the financing of the project.

(g) "Person" means any natural or corporate person, including bodies politic and corporate, trust, society, association, partnership, nonprofit economic or community development corporation, or any governmental agency.

(h) "Area of high unemployment" means a city or county or portion thereof.

SEC. 3. Section 15712 of the Government Code is amended to read:

15712. (a) There is hereby established in state government the California Economic Development Financing Authority. The authority is a body public and corporate. The authority constitutes a public instrumentality and the exercise by the authority of the powers conferred by this part is the performance of an essential public function.

(b) The authority shall not be subject to the supervision or control of any board, bureau, department, or other agency of the state except as specifically provided in this part.

(c) The board of directors of the authority shall consist of the following:

(1) The Director of Finance or his or her designee.

(2) The Treasurer or his or her designee.

(3) The Secretary of Trade and Commerce or his or her designee, who shall serve as chair of the board.

(d) Any designated director shall serve at the pleasure of the designating power.

(e) Two of the members shall constitute a quorum and the affirmative vote of two board members shall be necessary for any action to be taken by the board.

(f) This part shall be administered by the authority, which shall have, and is hereby vested with, all powers reasonably necessary to carry out its duties and responsibilities.

(g) The authority may employ any other persons necessary to perform the duties imposed by this part.

SEC. 4. Section 15713 of the Government Code is amended to read:

15713. (a) The board may appoint a deputy director, upon recommendation of the chair, to carry out its policies with respect to the authority. The deputy director shall serve at the pleasure of the board and shall manage the staff of the authority.

(b) The deputy director shall receive compensation as fixed by the chair with the approval of the Department of Personnel Administration.

(c) The deputy director may, subject to the general supervision of the board, employ other employees, consultants, agents, including legal counsel, and advisors, and may attend meetings of the board.

(d) All officers and employees of the authority having access to its cash or negotiable securities shall give bond to the authority at its expense in amounts and with the surety the board may prescribe. The persons required to give bond may be included in one or more blanket or scheduled bonds.

(e) The authority shall continue as long as it shall have bonds or insurance commitments outstanding and until its existence is terminated by law. Upon the termination of the existence of the authority, all right, title and interest in and to all of its assets and all of its obligations, duties, covenants, and agreements shall vest in and shall be possessed, performed, and assumed by the state.

(f) Any documentary materials or data whatsoever made or received by any member or employee of the authority and consisting of trade secrets or commercial or financial information regarding the operation of any business conducted by an applicant for any form of assistance that the authority is empowered to render, or regarding the competitive position of an applicant in a particular field of endeavor, shall not be deemed public records of the authority. Any discussion of trade secrets or commercial or financial information may be held by the authority or the board in executive sessions closed to the public. The purpose of any executive session shall be set forth in the official minutes of the authority and no business that is not directly related to that purpose shall be transacted nor shall any vote be taken during the executive session.

SEC. 5. Section 15714 of the Government Code is amended to read:

15714. The purpose of the authority is to promote and encourage commerce and industry, and generally to foster economic development in the state. In furtherance of this purpose, the authority may do all of the following:

(a) Adopt and amend bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal.

(c) Sue and be sued in its own name.

(d) To obtain insurance.

(e) Issue bonds, subject to the approval of the board of the California Infrastructure and Economic Development Bank, borrow money, and apply the proceeds thereof as provided in Section 15715

in order to implement the economic development purposes of this part, and to augment the means of financing authorized by law for, or otherwise available to, public bodies and other users.

(f) Make loans to approved projects, either as sole lender or in participation with other lenders.

(g) Make loans to any person for the acquisition, construction, alteration, or any combination thereof, or other financing of a project, including, but not limited to, loans to lending institutions under terms and conditions requiring the proceeds of the loans to be used by those lending institutions for the making of loans to users for qualified projects.

(h) Make or provide for the making of guarantees, credit enhancements, grants, contributions, or other financial enhancements.

(i) To plan, acquire, or lease facilities on a temporary basis and to provide for the construction, reconstruction, improvement, alteration, or repair of any facility or part thereof.

(j) To enter into contracts and agreements and execute all instruments necessary or convenient thereto for accomplishing the purposes of the authority.

(k) To acquire personal property, or any interest therein, on either a temporary or long-term basis in the name of the authority and to acquire real property on a temporary basis by gift, purchase, transfer, foreclosure, lease or otherwise including rights of easements; to hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of any real or personal property, or any interest therein or mortgage any interest owned by it or under its control, custody, or in its possession; to release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any equity or right or redemption in property foreclosed by it; to take assignments or leases and rentals, proceed with foreclosure actions or take any other actions necessary or incidental to the performance of its purposes.

(*l*) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in such investments as may be provided in any financing document relating to the use of those funds, or, if not so provided, as the board may determine.

(m) To apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value. The sources may include bond proceeds, dedicated taxes, state appropriations, federal appropriations, federal grant and loan funds, public and private sector retirement system funds, and proceeds of loans from the Pooled Money Investment Account. The authority may request, and the Pooled Money Investment Board may make, loans to the authority from the Pooled Money Investment Account in accordance with Section 16314.

(n) To provide and pay for such advisory services and technical assistance as may be necessary or desired to carry out the purposes

of this part, including contracting with nonprofit economic development or community development corporations to market and develop local projects.

(o) To establish and collect any fees and charges as the authority shall determine to be reasonable, and to receive and apply revenues from fees and charges to the purposes of the agency. The authority may enter into fee-sharing agreements with nonprofit economic development corporations.

(p) To do all things necessary and convenient to carry out its purposes and exercise its powers, provided, however, that nothing herein shall be construed to authorize the authority to engage directly in the business of a manufacturing, industrial, real estate development, or nongovernmental service enterprise. Further, the authority shall not be organized to accept deposits of money for time or demand deposits or to constitute a bank or trust company.

SEC. 6. Section 15721 of the Government Code is amended to read:

15721. (a) All public works financed pursuant to this part shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(b) Public infrastructure financing through public agencies shall be only in conjunction with an otherwise qualified economic development project, as defined in Section 15711.

(c) The authority shall require that the proposed project be consistent with any existing local or regional comprehensive plan.

(d) No financing shall be provided for any project for housing.

SEC. 7. Section 63010 of the Government Code is amended to read:

63010. For purposes of this division, the following words and terms shall have the following meanings unless the context clearly indicates or requires another or different meaning or intent:

(a) "Act" means the Bergeson-Peace Infrastructure and Economic Development Bank Act.

(b) "Bank" means the California Infrastructure and Economic Development Bank.

(c) "Board" or "bank board" means the board of directors of the California Infrastructure and Economic Development Bank.

(d) "Bond purchase agreement" means a contractual agreement executed between the bank and a sponsor, or a special purpose trust authorized by the bank or a sponsor, or both, whereby the bank or special purpose trust authorized by the bank agrees to purchase bonds of the sponsor for retention or sale.

(e) "Bonds" means bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond, revenue, tax or grant anticipation notes; commercial paper; floating rate, and variable maturity securities; and any other evidences of indebtedness, including certificates of participation, or

lease-purchase agreements, whether taxable or excludable from gross income for federal income taxation purposes.

(f) "Cost," as applied to a project or portion thereof financed under this division, means all or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery, equipment, and financing charges; interest prior to, during, and for a period after, completion of construction, renovation, or acquisition, as determined by the bank; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project or incidental to the construction, acquisition, or financing of any project.

(g) "Executive director" means the executive director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

(h) "Facilities" means real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof that are directly related to providing the following:

(1) "City streets" includes any street, avenue, boulevard, road, parkway, drive, or other way that is any of the following:

(A) An existing municipal roadway.

(B) Is shown upon a plat approved pursuant to law and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(2) "County highways" includes any county highway as defined in Section 25 of the Streets and Highways Code, that includes the land between the highway lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(3) "Drainage and flood control" includes ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as

well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

(4) "Educational facilities" includes libraries, child care facilities, including, but not limited to, day care facilities, and employment training facilities.

(5) "Environmental mitigation measures" includes required construction or modification of public infrastructure and purchase and installation of pollution control and noise abatement equipment.

(6) "Parks and recreational facilities" includes local parks, recreational property and equipment, parkways and property.

(7) "Port facilities" includes docks, harbors, ports of entry, piers, ships, small boat harbors and marinas, and any other facilities, additions, or improvements in connection therewith.

(8) "Communications" includes facilities for telephone and telecommunications service.

(9) "Public transit" includes air and rail transport of goods, airports, guideways, vehicles, rights-of-way, passenger stations, maintenance and storage yards, and related structures, including public parking facilities, equipment used to provide or enhance transportation by bus, rail, ferry, or other conveyance, either publicly or privately owned, that provides to the public general or special service on a regular and continuing basis.

(10) "Sewage collection and treatment" includes pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or eliminate impurities or contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

(11) "Solid-waste collection and disposal" includes vehicles, vehicle-compatible waste receptacles, transfer stations, recycling centers, sanitary landfills, and waste conversion facilities necessary to remove solid waste, except that which is hazardous as defined by law, from its point of origin.

(12) "Water treatment and distribution" includes facilities in which water is purified and otherwise treated to meet residential, manufacturing, or commercial purposes and the conduits, pipes, and pumps that transport it to places of use.

(13) "Defense conversion" includes, but is not limited to, facilities necessary for successfully converting military bases consistent with an adopted base reuse plan.

(14) "Public safety facilities" includes, but is not limited to, police stations, fire stations, court buildings, jails, juvenile halls, and juvenile detention facilities.

(15) "State highways" includes any state highway as described in Chapter 2 (commencing with Section 230) of Division 1 of the Streets

and Highways Code, and the related components necessary for safe operation of the highway.

(i) "Financial assistance" in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the bank or special purpose trust, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase or retention of bank bonds, the bonds of a sponsor for their retention or for sale by the bank, or the issuance of bank bonds or the bonds of a special purpose trust used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by Section 63025; bonds for which the bank has provided a guarantee or enhancement, including, but not limited to, the purchase of the subordinated bonds of the sponsor, the subordinated bonds of a special purpose trust, or the retention of the subordinated bonds of the bank pursuant to Chapter 4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities.

For purposes of this subdivision, "grant" does not include grants made by the bank except when acting as an agent or intermediary for the distribution or packaging of financing available from federal, private, or other public sources.

(j) "Guarantee trust fund" means the California Infrastructure Guarantee Trust Fund.

(k) "Infrastructure bank fund" means the California Infrastructure and Economic Development Bank Fund.

(*l*) "Loan agreement" means a contractual agreement executed between the bank or a special purpose trust and a sponsor that provides that the bank or special purpose trust will loan funds to the sponsor and that the sponsor will repay the principal and pay the interest and redemption premium, if any, on the loan.

(m) "Participating party" means any person, company, corporation, partnership, firm, or other entity or group of entities engaged in business within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project.

(n) "Project" means designing, acquiring, planning, permitting, entitling, constructing, improving, extending, restoring, financing, and generally developing facilities within the state.

(o) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, and all other income or receipts derived by the bank or a sponsor from the sale, lease, or other financing arrangement undertaken by the bank, a sponsor or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from

the investment of any money in any fund or account of the bank or a sponsor. Revenues shall not include moneys in the General Fund of the state.

(p) "Special purpose trust" means a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity authorized under the laws of the state to serve as an instrumentality of the state to accomplish public purposes and authorized by the bank to acquire, by purchase or otherwise, for retention or sale, the bonds of a sponsor or of the bank made or entered into pursuant to this division and to issue special purpose trust bonds or other obligations secured by these bonds or other sources of public or private revenues.

(q) "Sponsor" means any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that has, or proposes to acquire, an interest in a project and that makes application to the bank for financial assistance in connection with a project in a manner prescribed by the bank.

(r) "State" means the State of California.

SEC. 8. Section 63020 of the Government Code is repealed.

SEC. 9. Section 63021 of the Government Code is amended to read:

63021. (a) There is within state government the California Infrastructure and Economic Development Bank which shall be responsible for administering this division.

(b) Unless the context requires otherwise, any reference in this division to the California Housing and Infrastructure Finance Agency, or "agency," shall be construed to refer to the California Infrastructure and Economic Development Bank for the purposes of this division.

(c) The bank shall be under the direction of an executive director appointed by the Governor, and who shall serve at the pleasure of the Governor. The appointment shall be subject to confirmation by the Senate.

SEC. 10. Section 63021.5 is added to the Government Code, to read:

63021.5. (a) The bank shall be governed and its corporate power exercised by a board of directors that shall consist of the following persons:

(1) The Director of Finance or his or her designee.

(2) The Treasurer or his or her designee.

(3) The Secretary of Trade and Commerce or his or her designee, who shall serve as chair of the board.

(b) Any designated director shall serve at the pleasure of the designating power.

(c) Two of the members shall constitute a quorum and the affirmative vote of two board members shall be necessary for any action to be taken by the board.

(d) No member of the board shall participate in any bank action or attempt to influence any decision or recommendation by any employee of, or consultant to, the bank that involves a sponsor of which he or she is a representative or in which the member or a member of his or her immediate family has a personal financial interest within the meaning of Section 87100. For purposes of this section, "immediate family" means the spouse, children, and parents of the member.

(e) Except as provided in this subdivision, the members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for these expenses is not otherwise provided or payable by another public agency, and shall receive one hundred dollars ($100) for each full day of attending meetings of the authority.

SEC. 11. Section 63022.5 of the Government Code is amended to read:

63022.5. (a) The officers of the bank shall be subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)), the applicable rules and standards of the Municipal Securities Rulemaking Board, and all other applicable provisions of law.

(b) The bank may purchase insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if the insurance permits recourse by the insurer against the fiduciary in the case of a breach fiduciary obligation by the fiduciary.

SEC. 12. Section 63023 of the Government Code is amended to read:

63023. In administering and directing the day-to-day operations of the bank in regard to this division, the executive director, or whoever he or she shall assign, may do any of the following if authorized by resolution of the board:

(a) Enter into contracts for investment, guarantee, or enhancement.

(b) Establish procedures, guidelines, criteria, terms, conditions, or other requirements of any contract, bond, grant, or program, as the case may be, in order to carry out the intents and purposes of the board in authorizing any bond, loan, or grant program pursuant to this division.

(c) Decline to guarantee any risk, or to enter into any contract, in which the minimum requirements of the guarantee trust fund or the infrastructure bank fund are not complied with.

(d) Reinsure any risk or any part of any risk.

(e) Make rules for payments through the infrastructure bank fund and the settlement of claims against the guarantee trust fund and determine to whom and through whom the payments are to be made.

(f) Enter into any contracts or obligations relating to the infrastructure bank fund and the guarantee trust fund.

(g) Invest and reinvest the moneys belonging to the infrastructure bank fund and the guarantee trust fund as provided by this division.

(h) Enter into any contract or agreement, execute any instrument, conduct all business and affairs, and perform all acts relating to the infrastructure bank fund and the guarantee trust fund whether or not specifically designated in this division.

SEC. 13. Section 63025.1 of the Government Code is amended to read:

63025.1. The bank board may do or delegate the following to the executive director:

(a) Sue and be sued in its own name.

(b) As provided in Chapter 5 (commencing with Section 63070), issue bonds and authorize special purpose trusts to issue bonds, including, at the option of the board, bonds bearing interest that is taxable for the purpose of federal income taxation, to pay all or any part of the cost of any project.

(c) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this division.

(d) Employ attorneys, financial consultants, and other advisers as may, in the bank's judgment, be necessary in connection with the issuance and sale, or authorization of special purpose trusts for the issuance and sale, of any bonds, notwithstanding Sections 11042 and 11043.

(e) Contract for engineering, architectural, accounting, or other services of appropriate state agencies as may, in its judgment, be necessary for the successful development of a project.

(f) Pay the reasonable costs of consulting engineers, architects, accountants, and construction, land use, recreation, and environmental experts employed by any sponsor or participating party if, in the bank's judgment, those services are necessary for the successful development of a project.

(g) Take title to, and sell by installment sale or otherwise, lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands that are located within the state as the bank may deem necessary or convenient for the financing of the project, upon terms and conditions that it considers to be reasonable.

(h) Receive and accept from any source including, but not limited to, the federal government, the state, or any agency thereof, loans, contributions, or grants, in money, property, labor, or other things of value, for, or in aid of, a project, or any portion thereof.

(i) Make secured loans to any sponsor or participating party in connection with the financing of a project in accordance with an agreement between the bank and the sponsor or a participating party. However, no loan shall exceed the total cost of the project as determined by the sponsor or the participating party and approved by the bank.

(j) Make secured loans to any sponsor or participating party in accordance with an agreement between the bank and the sponsor or participating party to refinance indebtedness incurred by the sponsor or participating party in connection with projects undertaken and completed prior to any agreement with the bank or expectation that the bank would provide financing.

(k) Mortgage all or any portion of the bank's interest in a project and the property on which any project is located, whether owned or thereafter acquired, including the granting of a security interest in any property, tangible or intangible.

(*l*) Assign or pledge all or any portion of the bank's interests in assets, things of value, mortgages, deeds of trust, bonds, bond purchase agreements, loan agreements, indentures of mortgage or trust, or similar instruments, notes, and security interests in property, tangible or intangible and the revenues therefrom, of a sponsor or a participating party to which the bank has made loans, and the revenues therefrom, including payment or income from any interest owned or held by the bank, for the benefit of the holders of bonds.

(m) Receive or serve as a conduit for the making of grants, and provide for contributions, guarantees, insurance, credit enhancements or liquidity facilities, or other financial enhancements to a sponsor or a participating party as financial assistance for a project.

(n) Lease the project being financed to a sponsor or a participating party, upon terms and conditions that the bank deems proper but shall not be leased at a loss; charge and collect rents therefor; terminate any lease upon the failure of the lessee to comply with any of the obligations thereof; include in any lease, if desired, provisions that the lessee shall have options to renew the lease for a period or periods, and at rents determined by the bank; purchase any or all of the project; or, upon payment of all the indebtedness incurred by the bank for the financing of the project, the bank may convey any or all of the project to the lessee or lessees.

(o) Charge and equitably apportion among sponsors and participating parties the bank's administrative costs and expenses incurred in the exercise of the powers and duties conferred by this division.

(p) Issue, obtain, or aid in obtaining, from any department or agency of the United States, from other agencies of the state, or from any private company, any insurance or guarantee to, or for, the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, or obligation or any instrument

evidencing or securing the same, made or entered into pursuant to this division.

(q) Notwithstanding any other provision of this division, enter into any agreement, contract, or any other instrument with respect to any insurance or guarantee; accept payment in the manner and form as provided therein in the event of default by a sponsor or a participating party; and issue or assign any insurance or guarantee as security for the bank's bonds.

(r) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary or convenient to, directly or indirectly, secure the bank's bonds, the bonds issued by a special purpose trust, or a sponsor's obligations to the bank or to a special purpose trust, including, but not limited to, bonds of a sponsor purchased by the bank or a special purpose trust for retention or sale, with funds or moneys that are legally available and that are due or payable to the sponsor by reason of any grant, allocation, apportionment or appropriation of the state or agencies thereof, to the extent that the Controller shall be the custodian at any time of these funds or moneys, or with funds or moneys that are or will be legally available to the sponsor, the bank, or the state or any agencies thereof by reason of any grant, allocation, apportionment, or appropriation of the federal government or agencies thereof; and in the event of written notice that the sponsor has not paid or is in default on its obligations to the bank or a special purpose trust, direct the Controller to withhold payment of those funds or moneys from the sponsor over which it is or will be custodian and to pay the same to the bank or special purpose trust or their assignee, or direct the state or any agencies thereof to which any grant, allocation, apportionment or appropriation of the federal government or agencies thereof is or will be legally available to pay the same upon receipt by the bank or special purpose trust or their assignee, until the default has been cured and the amounts then due and unpaid have been paid to the bank or special purpose trust or their assignee, or until arrangements satisfactory to the bank or special purpose trust have been made to cure the default.

(s) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or appropriate to carry out any power expressly given to the bank by this division, including, but not limited to, agreements for the sale of all or any part, including principal, interest, redemption rights or any other rights or obligations, of bonds of the bank or of a special purpose trust, liquidity agreements, contracts commonly known as interest rate swap agreements, forward payment conversion agreements, futures or contracts providing for payments based on levels of, or changes in, interest rates or currency exchange rates, or contracts to exchange cash-flows or a series of payments, or contracts, including options, puts or calls to hedge payments, rate, spread, currency exchange, or

similar exposure, or any other financial instrument commonly known as a structured financial product.

(t) Purchase, with the proceeds of the bank's bonds, bonds issued by any sponsor in connection with a project, pursuant to a bond purchase agreement or otherwise. Bonds purchased pursuant to this part may be held by the bank, pledged or assigned by the bank, or sold to public or private purchasers at public or negotiated sale, in whole or in part, separately or together with other bonds issued by the bank, and notwithstanding any other provision of law, may be bought by the bank at private sale.

(u) Enter into purchase and sale agreements with all entities, public and private, including state and local government pension funds, with respect to the sale or purchase of bonds.

(v) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.

(w) Authorize a special purpose trust or trusts to purchase or retain, with the proceeds of the bonds of a special purpose trust, bonds issued by any sponsor in connection with a project or issued by the bank or a special purpose trust, pursuant to a bond purchase agreement or otherwise. Bonds purchased pursuant to this title may be held by a special purpose entity, pledged or assigned by a special purpose entity, or sold to public or private purchasers at public or negotiated sale, in whole or in part, with or without structuring, subordination or credit enhancement, separately or together with other bonds issued by a special purpose trust, and notwithstanding any other provision of law, may be bought by the bank or by a special purpose trust at private sale.

(x) Approve the issuance of any bonds, notes, or other evidences of indebtedness by the California Economic Development and Financing Authority, established pursuant to Section 15712, and the Rural Economic Development Infrastructure Panel, established pursuant to Section 15373.7.

SEC. 14. Section 63030 of the Government Code is amended to read:

63030. Bonds issued by the bank or a special purpose trust are legal investments for all trust funds, the funds of all insurance companies, banks, both commercial and savings, trust companies, executors, administrators, trustees, and other fiduciaries, for state school funds, pension funds, and for any funds that may be invested in county, school, or municipal bonds. These bonds are securities that may legally be deposited with, and received by, any state or municipal officer or agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now, or may hereafter be, authorized by law, including, deposits to secure public funds.

SEC. 15. Section 63031 of the Government Code is amended to read:

63031. No liability shall be incurred by the bank beyond the extent to which funds have been provided under this division. However, for the purposes of meeting the necessary expenses of initial organization and operation until the date that the bank derives revenues or proceeds from bonds as provided under this division, the bank may borrow money as needed for the purposes of meeting the necessary expenses of initial organization and operation from the Pooled Money Investment Account, as specified in subdivision (w) of Section 63025.1 or from any special funds, including the special funds of existing financing authorities. The borrowed money shall be repaid with interest within a reasonable time after the bank receives revenues or proceeds from bonds as provided under this division.

SEC. 16. Section 63032 of the Government Code is amended to read:

63032. (a) Neither the bank nor a special purpose trust authorized by the bank is required to pay any property taxes or assessments upon, or with respect to, any project or any property acquired by, or for, the bank under this division, or upon the income therefrom, so long as the bank, on behalf of the state, holds title to the project or to the property contained in the project.

(b) The exemption of the bank or of a special purpose trust from taxation of any property shall cease when title to the property is transferred from the bank to any taxable person or entity. This section does not exempt any taxable person or entity from taxation, including, but not limited to, taxation upon a possessory interest, with respect to any project, or the property of facilities contained in any project that may otherwise be applicable to the person.

SEC. 17. Section 63035 of the Government Code is amended to read:

63035. The bank shall, not later than November 1 of each year, submit to the Governor and the Joint Legislative Budget Committee a report of its activities pursuant to this division for the preceding fiscal year. The report shall include all of the following:

(a) A listing of applications accepted, including a description of the expected employment impact of each project.

(b) A specification of bonds sold and interest rates thereon.

(c) The amount of other public and private funds leveraged by the assistance provided.

(d) A report of revenues and expenditures for the preceding fiscal year, including all of the bank's costs.

(e) A projection of the bank's needs and requirements for the coming year.

(f) Recommendations for changes in state and federal law necessary to meet the objectives of this division.

SEC. 18. Section 63041 of the Government Code is amended to read:

63041. The criteria, priorities, and guidelines shall require at least the following:

(a) The project shall be consistent with the goals and policies contained in the State Environmental Goals and Policies Report, or its successor, approved pursuant to Article 5 (commencing with Section 65041) of Chapter 1.5 of Division 1 of Title 7. After January 1, 1996, a finding of consistency under this subdivision is only required if the report is current and has been updated and approved by the Governor pursuant to the statutory timeframes included in Section 65048.

(b) If the sponsor of the project is a state agency, board, commission, or department, the project shall be consistent with the Capital and Infrastructure Project Planning Report prepared by the Director of Finance pursuant to Article 2 (commencing with Section 13100) of Chapter 2 of Part 3 of Title 2. If the sponsor is a state agency, board, commission, or department, the project proposal or application shall be submitted to the Legislature for approval through the annual Budget Act. All projects affecting state boards, departments, commissions or agencies shall be subject to approval in the annual Budget Act or other specific legislation.

(c) If the sponsor of the project is a city, county, city and county, special district, joint powers agency, or any other local government entity, the project shall be consistent with the general plan of each city and each county in which the project is located. The general plan of that city and that county in which the project is located shall substantially comply with the requirements of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7. The project shall also be consistent with the capital improvement program adopted by each city and each county in which the project is located. The capital improvement program of that city or county shall be substantially equivalent to the program described in Section 65403.

SEC. 19. Section 63052 of the Government Code is amended to read:

63052. (a) The bank may pledge any or all of the moneys in the fund as security for payment of the principal of, and interest on, any particular issuance of bonds issued pursuant to this chapter. The bank may use any or all of the moneys in the fund, including the grant account, to retain or purchase for retention or sale, subordinated bonds issued by the bank, by a special purpose trust, or by a sponsor pursuant to this chapter. For these purposes, or as necessary or convenient to the accomplishment of any other purpose of the bank, the bank may divide the fund into separate accounts or subaccounts. All moneys accruing to the bank pursuant to this division from any sources shall be deposited in the fund.

(b) Subject to priorities that may be created by the pledge of particular moneys in the infrastructure bank fund to secure any issuance of revenue bonds of the bank, a special purpose trust, or a sponsor, and subject further to reasonable costs that may be incurred

by the bank in administering the program authorized by this division, all moneys in the infrastructure bank fund derived from any source, shall be held in trust for the security and payment of revenue bonds of the bank, a special purpose trust, or a sponsor and shall not be used or pledged for any other purpose so long as the revenue bonds are outstanding and unpaid.

(c) Pursuant to any agreements with the holders of revenue bonds pledging any particular assets, revenues, or moneys, the bank may create separate accounts or subaccounts in the infrastructure bank fund to manage these assets, revenues, or moneys in the manner set forth in the agreements.

(d) The bank may, from time to time, direct the Treasurer to invest moneys in the infrastructure bank fund that are not required for its current needs, including proceeds from the sale of any bonds, in any eligible securities specified in Section 16430 as the bank shall designate. The bank may direct the Treasurer to deposit moneys in interest-bearing accounts in any bank in this state or in any savings and loan association in this state. The bank may alternatively require the transfer of moneys in the infrastructure bank fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2. Notwithstanding Section 16305.7, all interest or other increment resulting from the investment or deposit of moneys from the infrastructure bank fund shall be deposited in the infrastructure bank fund. Moneys in the infrastructure bank fund shall not be subject to transfer to any other funds pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2, except to the Surplus Money Investment Fund.

(e) Subject to any agreement with holders of particular bonds, in furtherance of Section 51373 of the Health and Safety Code, and to the extent permitted by law, the bank may also invest moneys of the infrastructure bank fund, including, but not limited to, proceeds of any of its bonds or refunding bonds, in obligations of financial institutions as are permitted by board resolution. The bank may alternatively require the transfer of moneys in the infrastructure bank fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(f) Subject to any agreement with the holders of particular bonds, all interest or other increment resulting from the investment or deposit shall be deposited in the infrastructure bank fund, notwithstanding Section 16305.7. Moneys in the infrastructure bank fund shall not be subject to transfer to any other fund pursuant to Part 2 (commencing with Section 16300) of Division 4 of Title 2, excepting the Surplus Money Investment Fund.

(g) The infrastructure bank fund shall be organized as a public enterprise fund.

(h) The bank shall cause all moneys in the infrastructure bank fund that are in excess of current requirements to be invested and reinvested, from time to time.

SEC. 20. Section 63060 of the Government Code is amended to read:

63060. (a) There is hereby created in the State Treasury the California Infrastructure Guarantee Trust Fund.

Notwithstanding Section 13340 and except as provided in subdivision (b), all money in the guarantee trust fund is hereby continuously appropriated to the bank without regard to fiscal years for the purpose of insuring all or a portion of the accounts and subaccounts within the infrastructure bank fund, any contracts or obligations of the bank or a sponsor, and all or a part of any series of bonds issued by the bank, by a special purpose trust, or by a sponsor pursuant to this division, and for the purpose of defraying administrative expenses incurred by the bank in operating the programs of loan and bond guarantee. All insurance premiums received by the bank for insurance, guarantees, or enhancements provided pursuant to this division shall be deposited in the guarantee trust fund. The guarantee trust fund is authorized to guarantee all or a part of any of the accounts and subaccounts within the infrastructure bank fund, any contracts or obligations of the bank, a special purpose trust, or a sponsor, and all or part of any series of bonds issued by the bank, by a special purpose trust, or by a sponsor and to authorize payment on any guarantee or enhancement of the guarantee trust fund.

(b) Moneys in the infrastructure bank fund shall be available for expenditure for general administration only upon appropriation by the Legislature. This subdivision shall not limit the authority of the bank to expend funds directly related to the servicing of approved debt.

SEC. 21. Section 63062 of the Government Code is amended to read:

63062. (a) The bank may, from time to time, direct the Treasurer to invest moneys in the guarantee trust fund that are not required for its current needs in any eligible securities specified in Section 16430 that the bank shall designate. The bank may direct the Treasurer to invest the moneys by entering into repurchase agreements or reverse repurchase agreements, which, for purposes of this section, shall mean agreements for the purchase or sale of eligible securities pursuant to which the seller or buyer agrees to repurchase or sell back the securities on or before a specified date and for a specified amount. The bank may direct the Treasurer to invest the moneys in the subordinated securities of the bank, a special purpose trust, or a sponsor. The bank may direct the Treasurer to invest the moneys in investment agreements with corporations, financial institutions, or national associations within the United States that are rated by a nationally recognized rating service within the top three rating

categories of the service. For purposes of this section, investment agreements shall mean any agreement for the investment of moneys in the guarantee trust fund whether at fixed or variable interest rates, and may include, but not be limited to, repurchase agreements, notes, uncollateralized time deposits, certificates of deposit, and the subordinated securities of the bank, a special purpose trust, or a sponsor. The bank may direct the Treasurer to deposit moneys in interest-bearing accounts in state or national banks or other financial institutions having principal offices in this state.

(b) In furtherance of Section 51373 of the Health and Safety Code, and to the extent permitted by law, the bank may also invest moneys of the guarantee trust fund in obligations of financial institutions that are permitted by board resolution. The bank may alternatively require the transfer of moneys in the guarantee trust fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(c) All interest or other increment resulting from the investment or deposit shall be deposited in the guarantee trust fund, notwithstanding Section 16305.7.

(d) The bank may create other accounts within the guarantee trust fund as are necessary or convenient to carry out the purposes of this article.

SEC. 22. Section 63063 of the Government Code is amended to read:

63063. (a) There is a guarantee reserve account in the guarantee trust fund to secure commitments under contracts to guarantee all or part of the bonds of the bank, a special purpose trust, or of a sponsor, any contracts or obligations of the bank, a special purpose trust, or of a sponsor, and all or part of the accounts or subaccounts within the infrastructure bank fund. The bank shall take all reasonable steps to ensure that the guarantee reserve account is continuously maintained at not less than the reserve account requirement established pursuant to subdivision (a) of Section 63064. The bank shall pay all of the following into the guarantee reserve account:

(1) Moneys appropriated and made available by the Legislature for deposit in the account.

(2) Any proceeds of bonds, including general obligation bonds, to the extent provided in the resolution, trust agreement, resolutions or trust agreements authorizing the issue thereof.

(3) Any other moneys that the bank may make available for the purpose of deposit to the guarantee reserve account.

(b) The bank shall not cause sums to be withdrawn from the guarantee reserve account in amounts that would reduce the moneys therein to less than the reserve account requirement, except as necessary to satisfy liabilities arising under contracts of guarantee. In the event that the loan guarantee reserve account is reduced to less

than the reserve account requirement, the bank shall cease making commitments for, and contracts of, guarantees and enhancements until the guarantee reserve account has been restored to that requirement.

SEC. 23. Section 63065 of the Government Code is amended to read:

63065. (a) The obligation of the bank and of the state to pay any guarantee benefit pursuant to contracts of guarantee or any other contracts or obligations of the bank, a special purpose trust, or sponsor shall be a limited obligation of the bank payable solely from amounts deposited in the guarantee trust fund that are made available therefor under the respective contracts of guarantee. The guarantee of loans or bonds under this division shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor, or to make any appropriation for their payment.

(b) All contracts of guarantee or any other contracts or obligations of the bank, special purpose trust, or a sponsor pursuant to this division shall contain on the face thereof a statement to the following effect: "Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this contract of guarantee."

(c) Moneys in the guarantee trust fund may not be transferred to any other fund except for payment on any guarantee or enhancements or except as necessary to pay the expenses of operating the program of bond guarantee and enhancement authorized by this division, nor shall the bank utilize any moneys under the direction and control of the agency, including, but not limited to, moneys in the California Housing Loan Insurance Fund and the California Housing Finance Fund, other than moneys in the guarantee trust fund, to satisfy liabilities arising from contracts of guarantee authorized by this division.

SEC. 24. Section 63066 of the Government Code is amended to read:

63066. The bank may charge and collect insurance guarantee or enhancement premiums or other fees for the insurance guarantees or enhancements described in this chapter and impose other reasonable charges and fees for services performed in connection with approval and processing of the guarantees or enhancements, or for pool assembly, loan servicing, or other services the bank may provide to a special service trust.

SEC. 25. Section 63067 of the Government Code is amended to read:

63067. (a) Moneys in the infrastructure bank fund received from the proceeds of bonds issued pursuant to this division may not be transferred to any other fund except as necessary to pay the expenses of operating the program authorized by this division, nor shall the bank utilize any moneys under the direction and control of the

agency, including, but not limited to, moneys in the California Housing Loan Insurance Fund and the Housing Finance Fund, other than moneys in the infrastructure bank fund to satisfy liabilities arising from projects authorized by this division.

(b) The infrastructure bank fund, on behalf of the bank or a special purpose trust, may borrow or receive moneys from any federal, state, or local agency or private entity, in order to create reserves in the infrastructure bank fund as provided in this division and as authorized by resolution of the board.

SEC. 26. Section 63070 of the Government Code is amended to read:

63070. (a) The bank may, from time to time, issue its revenue bonds in a principal amount that the bank shall determine to be necessary to provide sufficient funds for its purposes, which may include, but shall not be limited to, providing funds for the payment of costs of a project, for the purchase of bonds of a special purpose trust or a sponsor, payment of interest on bonds of the bank or of a special purpose trust, establishment of reserves to secure bonds, refunding previously issued bonds or refunding bonds of the bank, special purpose trust, or a sponsor, and payment of other expenditures of the bank or special purpose trust incident to issuance of bonds or refunding bonds of the bank.

(b) The bank, by private sale pursuant to a bond purchase agreement, may purchase the bonds of any local sponsor or of any special purpose trust that are issued pursuant to any other provision of applicable law, and may be secured with any funds, moneys, or revenues that are legally available.

(c) The bank may also issue bonds or authorize a special purpose trust to issue bonds for the purpose of making loans to a sponsor to be used by a sponsor to pay for the cost of a project, and that loan may be secured with any funds, moneys, or revenues that are legally available, including, but not limited to, any legally available funds or moneys that are due or payable to the sponsor by reason of any grant, allocation, or appropriation of the state or agencies thereof, to the extent that the Controller shall be the custodian at any time of these funds or moneys, and any legally available funds or moneys that are or will be due or payable to any sponsor, the bank, or the state or the agencies thereof by reason of any grant, allocation, apportionment, or appropriation of the federal government or agencies thereof.

SEC. 27. Section 63071 of the Government Code is amended to read:

63071. (a) Notwithstanding any other provision of law, but consistent with Sections 1 and 18 of Article XVI of the California Constitution, a sponsor may issue bonds for purchase by the bank pursuant to a bond purchase agreement. The bank may issue bonds or authorize a special purpose trust to issue bonds. These bonds may be issued pursuant to the charter of any city or any city and county that authorized the issuance of these bonds as a sponsor and may also

be issued by any sponsor pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5) to pay the costs and expenses pursuant to this title, subject to the following conditions:

(1) With the prior approval of the bank, the sponsor may sell these bonds in any manner as it may determine, either by private sale, or by means of competitive bid.

(2) Notwithstanding Section 54418, the bonds may be sold at a discount at any rate as the bank and sponsor shall determine.

(3) Notwithstanding Section 54402, the bonds shall bear interest at any rate and be payable at any time, as the sponsor shall determine with the consent of the bank.

(b) The total amount of bonds that may be outstanding at any one time under this chapter shall not exceed five billion dollars ($5,000,000,000).

(c) Bonds for which moneys or securities have been deposited in trust, in amounts necessary to pay or redeem the principal, interest, and any redemption premium thereon, shall be deemed not to be outstanding for purposes of this section.

SEC. 28. Section 63072 of the Government Code is amended to read:

63072. (a) The bank may give final approval for the issuance of the bonds or of the authorization of a special purpose trust upon terms it deems necessary or desirable.

(b) The executive director may establish the terms and conditions for the issuance of the bonds or of the authorization of a special purpose trust and take any other action necessary or desirable for the issuance of the bonds or of a special purpose trust authorized by the bank.

(c) Any action under this section shall be at the discretion of the bank.

SEC. 29. Section 63073 of the Government Code is amended to read:

63073. The Treasurer is the elected representative of the state to approve the issuance of bonds issued by the bank, a special purpose trust, or a sponsor pursuant to this chapter.

SEC. 30. Section 63074 of the Government Code is amended to read:

63074. (a) Bonds may be authorized to finance a single project for a single sponsor or a participating party, a series of projects for a single sponsor or a participating party, a single project for several sponsors or participating parties, or several projects for several sponsors or participating parties.

(b) Except as otherwise expressly provided by the bank, every issue of its bonds shall be payable from any revenues or other moneys of the bank available therefor and not otherwise pledged. These revenues or moneys may include the proceeds of additional bonds, subject only to any agreements with the holders of particular bonds

pledging any particular revenues or moneys. Notwithstanding that the bonds may be payable from a special fund, these bonds shall be deemed to be negotiable instruments for all purposes.

(c) Subject to the limitations in Section 63071, bonds may be issued in one or more series, may be issued as serial bonds or as term bonds or as a combination thereof. The bonds shall be authorized by resolution of the bank and shall, as provided by the resolution, bear the date of issuance, the time of maturity, which shall not exceed 50 years from the date of issuance, bear the rate or rates of interest, be payable at the time or times provided, be in the denominations provided, be in the form or forms provided, carry the registration privileges provided, be executed in the manner provided, be payable in lawful money of the United States, or other designated currency, at the place or places provided, and be subject to any terms of redemption provided therein.

(d) Sale of the bonds of the bank or of a special purpose trust shall be coordinated by the Treasurer in accordance with Section 5702. The Treasurer shall sell the bonds within 90 days of receiving a certified copy of the resolution authorizing the sale of bonds, unless the board adopts a resolution extending the 90-day period.

(e) The sale may be a public or private sale, and for any price or prices, and on any terms and conditions, as the bank determines proper, after giving due consideration to the recommendations of any special purpose trust and any sponsor to be assisted from the proceeds of the bonds. Pending preparation of definitive bonds, the Treasurer may issue interim receipts, certificates, or temporary bonds that shall be exchanged for definitive bonds.

SEC. 31. Section 63075 of the Government Code is amended to read:

63075. Any resolution authorizing any bonds or the authorization of a special purpose trust or any issue of bonds of the bank or a special purpose trust may contain the following provisions, which shall be a part of the contract with the holders of the bonds to be authorized:

(a) Provisions pledging the full faith and credit of the bank, or pledging all or any part of the revenues of any project, or any revenue-producing contract or contracts made by the bank with any sponsor, or any other moneys of the bank, to secure the payment of the bonds or of any particular issue of bonds, subject to those agreements with bondholders as may then exist and consistent with Sections 1 and 18 of Article XVI of the California Constitution.

(b) Provisions setting out the rentals, fees, purchase payments, loan repayments, and other charges, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(c) Provisions setting aside reserves or sinking funds, or providing for the use of subordinated classes of bonds by the bank or a special purpose trust, and the regulation and disposition thereof.

(d) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(e) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds and the holders thereof that are required to give consent thereto, and the manner in which the consent may be given.

(f) Limitations on the bank's expenditures for operation and administration, or other expenses.

(g) Definitions of acts or omissions to act that constitute a default in the duties of the bank to holders of its obligations, and providing the rights and remedies of the holders in the event of a default.

(h) The mortgaging of any project and the site thereof for the purpose of securing the interests of the bondholders.

(i) The mortgaging of land, improvements, or other assets owned by a sponsor or participating party for the purpose of securing the interests of the bondholders.

SEC. 32. Section 63076 of the Government Code is amended to read:

63076. Neither the officers of the bank nor any person executing the bonds of the bank or a special purpose trust shall be personally liable for the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

SEC. 33. Section 63077 of the Government Code is amended to read:

63077. The bank, a special purpose trust, or any sponsor or participating party may, out of any funds available therefor, purchase their respective bonds. The bank and a special purpose trust may hold, pledge, cancel, or resell their bonds, subject to and in accordance with agreements with bondholders.

SEC. 34. Section 63078 of the Government Code is amended to read:

63078. In the discretion of the bank, a special purpose trust, or the sponsor, as the case may be, any bonds issued under this chapter may be secured by a trust agreement between the bank, a special purpose trust, or the sponsor and a corporate trustee or trustees, that may include the Treasurer or any trust company or bank having the powers of a trust company within or without the state.

(a) The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign any funds or assets of the bank or special purpose trust legally available for pledge or assignment, all or a portion of the revenues to be received by the bank, directly or indirectly, with respect to the project, or the proceeds of any contract or contracts, loan or loan agreements, bond or bond purchase agreements, and may convey or mortgage the project or projects, or any portion thereof, to be financed out of the proceeds of the bonds. The trust agreement or resolution providing for the issuance of the bonds may contain provisions for protecting

and enforcing the rights and remedies of bondholders as may be reasonable and proper and not in violation of law, including provisions specifically authorized to be included in any resolution or resolutions of the bank or a sponsor authorizing bonds.

(b) Any bank or trust company doing business under the laws of the state that may act as a depository of the proceeds of bonds or of revenues or other moneys shall furnish indemnifying bonds or pledge securities when required by the bank, a special purpose trust, or a sponsor.

(c) The trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition, any trust agreement or resolution may contain other provisions that the bank may deem reasonable and proper for the security of the bondholders.

(d) The trust agreement may provide for the pledge or assignment of funds or moneys in the custody of the Controller that are legally available to a sponsor and that are due or payable to the sponsor by reason of any grant, allocation, apportionment, or appropriation of the state or agencies thereof, and any legally available funds or moneys that are or will be due or payable, to any sponsor, the bank, the state or the agencies thereof by reason of any grant, allocation, apportionment, or appropriation of the federal government or agencies thereof.

SEC. 35. Section 63079 of the Government Code is amended to read:

63079. (a) Bonds issued under this chapter do not constitute a debt or liability of the state or of any political subdivision thereof, other than the bank or a special purpose trust, and do not constitute a pledge of the full faith and credit of the state or any of its political subdivisions, other than the bank or special purpose trust, but are payable solely from the funds provided therefor under this chapter and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution. This subdivision shall in no way preclude bond guarantees or enhancements pursuant to this title. All the bonds shall contain on the face thereof a statement to the following effect:

"Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond."

(b) The issuance of bonds under this chapter shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation therefor or to make any appropriation for their payment. Nothing in this section shall prevent, or be construed to prevent, the bank from pledging the full faith and credit of the infrastructure bank fund to the payment of bonds or issuance of bonds authorized pursuant to this chapter.

SEC. 36. Section 63081 of the Government Code is amended to read:

63081. (a) The bank or a special purpose trust may issue bonds for the purpose of refunding any bonds, notes, or other securities of the bank, a special purpose trust, or a sponsor then outstanding, including the payment of any redemption premium thereon and any interest accrued, or to accrue, on their earliest or any subsequent date of redemption, purchase, or maturity of these bonds. The bank, or a sponsor, if it deems advisable, may issue or authorize a sponsor to issue bonds for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of any project or any portion thereof.

(b) The proceeds of any bonds issued for the purpose of refunding outstanding bonds as provided in subdivision (a) may, in the discretion of the bank, be applied to the purchase or retirement at maturity or redemption of those outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or retirement at the maturity thereof and may, pending this application, be placed in escrow to be applied to the purchase or retirement at maturity or redemption of those outstanding bonds on the date or dates as may be determined by the bank.

(c) Pending this use, the escrowed proceeds may be invested and reinvested by the Treasurer or a trustee in obligations of, or guaranteed by, the United States, or in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the United States, maturing at the time or times appropriate to assure prompt payment, of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded. The interest, income, and profits, if any, earned or realized on the investment may also be applied to the payment of the outstanding bonds to be refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income, and profits, if any, earned or realized on the investments thereof, shall be returned to the agency for use in carrying out the purposes of this division.

(d) The portion of the proceeds of the bonds issued for the additional purpose of paying all or any part of the cost of construction and acquiring additions, improvements, extensions, or enlargements of any project may be invested and reinvested by the Treasurer or a trustee in obligations of, or guaranteed by, the United States, or in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the United States, maturing not later than the time or times when these proceeds will be needed for the purpose of paying all or any part of the cost. The interest, income, and profits, if any, earned or realized on this investment may be applied to the payment of all, or any part of, the cost or may be used by the bank in carrying out the purposes of this division.

SEC. 37. Section 63083 of the Government Code is amended to read:

63083. Any and all bonds issued by the bank or a special purpose trust, their transfer and the income therefrom, shall at all times be

free from taxation of every kind by the state and by all political subdivisions of the state.

CHAPTER 864

An act to add Section 1375 to the Civil Code, relating to civil law.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 1375 is added to the Civil Code, to read:

1375. (a) Before an association commences an action for damages against a builder of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of subdivisions (b) to (g), inclusive, shall be met, except as otherwise provided in this section.

(b) (1) The association shall give written notice to the builder against whom the claim is made. This notice shall include all of the following:

(A) A preliminary list of defects.

(B) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if this survey has been conducted or a questionnaire has been distributed.

(C) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if this testing has been conducted.

(2) The association's notice shall, upon delivery of the notice to the builder, commence a period of time not to exceed 90 days, unless the association and builder agree to a longer period, during which the association and builder shall either, in accordance with the requirements of this section, attempt to settle the dispute or attempt to agree to submit it to alternative dispute resolution.

(3) (A) Except as provided in this section and notwithstanding any other provision of law, the notice by the association shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the damages claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by the association and the builder.

(B) At any time, the builder may give written notice to cancel the tolling of the statute of limitations provided in this section. Upon delivery of this written cancellation notice, the association shall be relieved of any further obligations to satisfy the requirements of this

subdivision and subdivisions (c) to (e), inclusive. The tolling of all applicable statutes of limitations shall cease 60 days after the written notice of cancellation by the builder is delivered to the association.

(1) Within 25 days of the date the association delivers the notice required by subdivision (b), the builder may request in writing to meet and confer with the board of directors of the association, and to inspect the project and conduct testing, including testing that may cause physical damage to any property in the development, in order to evaluate the claim. If the builder does not make a timely request to meet and confer with the board of directors of the association, or to conduct inspection and testing, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision and subdivisions (d) and (e). Unless the builder and association otherwise agree, the meeting shall take place no later than 10 days from the date of the builder's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (g) of Section 1363. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and builder consent to their admission. The meeting shall be for the purpose of discussing all of the following:

(A) The nature and extent of the claimed defects.

(B) Proposed methods of repair, to the extent there is sufficient information.

(C) Proposals for submitting the dispute to alternative dispute resolution.

(D) Requests from the builder to inspect the project and conduct testing.

(2) If the builder requests in writing to meet and confer with the board of directors of the association pursuant to paragraph (1) of this subdivision, the builder shall deliver the notice provided by the association to the builder pursuant to subdivision (b) to any insurer that has issued a policy to the builder which imposes upon the insurer a duty to defend the insured or indemnify the insured for losses resulting from the defects identified in the notice required by subdivision (b). The notice by the builder shall, upon receipt, impose upon that insurer any obligation which would be imposed under the terms of the policy if the insured had been served with a summons and complaint for damages. The builder shall inform the association when the builder delivers the notice to each insurer pursuant to this paragraph.

(d) (1) If the association conducted inspection and testing prior to the date it sent the written notice pursuant to subdivision (b), the association shall, at the earliest practicable date after the meeting held pursuant to subdivision (c), make available for inspection and testing at least those areas inspected or tested by the association. The inspection and testing shall be completed within 15 days from the date the association makes these areas available for inspection and testing, unless the association and builder agree to a longer period.

If the builder does not timely complete the inspection and testing, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision and subdivision (e). The manner in which the inspection and testing shall be conducted, and the extent of any inspection and testing to be conducted beyond that which was conducted by the association prior to sending the notice, shall be set by agreement of the association and builder.

(2) The builder shall pay all costs of inspection and testing that is requested by the builder, shall restore the property to the condition which existed immediately prior to the testing, and shall indemnify the association and owner of the separate interest for any damages resulting from the testing.

(3) Interior inspections of occupied separate interests and destructive testing of any interior of a separate interest shall be conducted in accordance with the governing documents of the association, unless otherwise agreed to by the owner of the separate interest. If the governing documents of the association do not provide for inspection or testing of separate interests, this inspection or testing shall be conducted in a manner and at a time agreed to by the owner of the separate interest.

(4) The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this section.

(e) (1) Within 30 days of the completion of inspection and testing or within 30 days of a meeting held pursuant to subdivision (c) if no inspection and testing is conducted pursuant to subdivision (d), the builder shall submit to the association all of the following:

(A) A request to meet with the board to discuss a written settlement offer.

(B) A written settlement offer, and a concise explanation of the specific reasons for the terms of the offer. This offer may include an offer to submit the dispute to alternative dispute resolution.

(C) A statement that the builder has access to sufficient funds to satisfy the conditions of the settlement offer.

(D) A summary of the results of testing conducted for the purpose of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the builder with actual test results pursuant to subdivision (b), in which case the builder shall provide the association with actual test results.

(2) If the builder does not timely submit the items required by this subdivision, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision only.

(3) No less than 10 days after the builder submits the items required by this paragraph, the builder and the board of directors of the association shall meet and confer about the builder's settlement offer, including any offer to submit the dispute to alternative dispute resolution.

(f) (1) At any time after the notice required by subdivision (b) is delivered to the builder, the association and builder may agree in writing to modify or excuse any of the time periods or other obligations imposed by this section.

(2) Except for the notice required pursuant to subdivision (g), all notices, requests, statements, or other communications required pursuant to this section shall be delivered by one of the following:

(A) By first-class registered or certified mail, return receipt requested.

(B) In any manner in which it is permissible to serve a summons pursuant to Section 415.10 or 415.20 of the Code of Civil Procedure.

(g) If the board of directors of the association rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall comply with the requirements of paragraph (1) of this subdivision. If the association is relieved of its obligations to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements are satisfied, the association shall comply with the requirements of paragraph (2) of this subdivision. Under no circumstances shall the association be required to comply with both paragraph (1) and paragraph (2) of this subdivision.

(1) (A) If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days before the association commences an action for damages against the builder.

(B) No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

(i) That a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting.

(ii) The options that are available to address the problems, including the filing of a civil action.

(iii) The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the board pursuant to paragraph (1) of subdivision (e), received from the builder and of any offer by the builder to submit the dispute to alternative dispute resolution.

(iv) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b) and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

(C) The builder shall pay all expenses attributable to sending the settlement offer and any offer for alternative dispute resolution to all members of the association. The builder shall also pay the expense of holding the meeting, not to exceed three dollars ($3) per association member.

(D) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to subparagraph (B), are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(E) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(2) If the association is relieved of its obligations to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements have been satisfied, the association may commence an action for damages against the builder 30 days after sending a written notice to each member specifying all of the following:

(A) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b), and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

(B) The options, including civil actions, that are available to address the problems.

(C) A statement that if 5 percent of the members of the association request a special meeting of the members to discuss the matter within 15 days of the date the notice is mailed or delivered to the members of the association, a meeting of the members shall be held, unless governing documents of the association provide for a different procedure for calling a special meeting of the members, in which case, the statement shall inform the members of that procedure.

(D) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(h) (1) The only method of seeking judicial relief for the failure of the association to comply with this section shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the builder after such an action has been filed. A verified application asserting such a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the builder alleging substantial noncompliance with this section, the court shall schedule a hearing within 21 days of the application to determine whether the association or builder has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3) (A) If the court finds that the association did not substantially comply with this section, the court shall stay the action for up to 90 days to allow the association to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance by the association. At any time, the court may, for good

cause shown, extend the period of the stay upon application of the association.

(B) If, within the time set by the court pursuant to this section, the association has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the builder has complied with this section.

(C) If the alleged noncompliance of either the builder or the association resulted from the unreasonable withholding of consent for inspection or testing by an owner of a separate interest, it shall not be considered substantial noncompliance, provided that the party alleged to be out of compliance did not encourage the withholding of consent.

(4) If the court finds that the builder did not pay all of the costs of inspection and testing pursuant to paragraph (3) of subdivision (a), or that the builder did not pay its required share of the costs of holding the meeting and of all expenses attributable to sending the settlement offer pursuant to subparagraph (C) of paragraph (1) of subdivision (g) of this section, the court shall order the builder to pay any deficiencies within 30 days, with interest, and any additional remedy which the court determines, in the interest of justice, should be fashioned.

(i) As used in this section:

(1) "Association" shall have the same meaning as defined in subdivision (a) of Section 1351.

(2) "Builder" means the declarant, as defined in subdivision (g) of Section 1351.

(C) "Common interest development" shall have the same meaning as in subdivision (c) of Section 1351, except that it shall not include developments or projects with less than 20 units.

CHAPTER 865

An act to amend Sections 976.6, 1612, 10205, 10206, 10206.5, 10214.5, and 10218.5 of the Unemployment Insurance Code, relating to employment training, and making an appropriation therefor.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 976.6 of the Unemployment Insurance Code is amended to read:

976.6. In addition to other contributions required by this division, every employer, except an employer defined by Section 676, 684, or 685, and except an employer which has elected an alternate method of financing its liability for unemployment compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3, shall pay into the Employment Training Fund contributions at the rate of 0.1 percent of wages specified in Section 930. The contributions shall be collected in the same manner and at the same time as any contributions required under Sections 977 and 977.5.

This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 2. Section 1612 of the Unemployment Insurance Code is amended to read:

1612. This article shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 2002, deletes or extends that date.

SEC. 3. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Establish a three-year plan that shall be updated annually, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The initial three-year plan shall be submitted to the Governor and the Legislature not later than January 1, 1994. The initial update of the plan shall be submitted not later than July 1, 1994, and annual updates of the plan thereafter shall be submitted not later than July 1 of each year. In carrying out this section, the panel shall review information in the following areas:

(1) Labor market information, including the state-local labor market information program in the Employment Development Department, and economic forecasts.

(2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.

(3) The demand for training by industry, type of training, and size of employer.

(4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.

(5) Changes in the demographics of the labor force and the population entering the labor market.

(6) Proposed expenditures by other agencies of federal Job Training Partnership Act funds and other state and federal training and vocational education funds on eligible participants.

(b) The panel shall maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

(1) The panel's objectives with respect to the criteria and priorities specified in Section 10200 and the distribution of funds between new-hire training and retraining.

(2) The identification of specific industries, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals that meet the standards.

(3) A system for expedited review of proposals that are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals that meet the needs identified in paragraph (2).

(4) The panel's goals and operational objectives with respect to meeting the needs of small employers.

(5) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.

(6) A priority list of skills that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages. This list should identify those industries in which upgrade training is likely to encourage hiring of the unemployed on a backfill basis.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A private industry council with the approval of the appropriate local elected officials in the service delivery area.

(4) A grant recipient or administrative entity selected pursuant to Section 103 of the Federal Job Training Partnership Act and Section 15021, with the approval of the local private industry council and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. However, the panel shall set contracting objectives with respect to minority-owned and female-owned businesses that are substantially similar to those

required by Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code, Section 10108.5 of the Public Contract Code, and Article 1.5 (commencing with Section 10115 of Chapter 1 of Part 2 of Division 2 of the Public Contract Code). No trainee shall receive employment training under this chapter for a period of more than 18 months. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(d) Fund training projects that best meet the priorities specified in the three-year plan. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants. This chapter shall not be construed to require the panel to set aside funds based on the priorities established in the three-year plan.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, the identification of employers who have been contacted by the contractor and who have provided reasonable assurance that they will employ successful trainees, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or approved that proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(g) Provide for evaluation of projects funded by this chapter. The evaluations shall assess the effectiveness of training previously funded by the panel to improve job security and stability for workers, and benefit participating employers and the state's economy, and shall compare the wages of trainees in the 12-month period prior to training as well as the 12-month period subsequent to completion of training, as reflected in the department's unemployment insurance tax records. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(h) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A description of the amount, type, and effectiveness of literacy training funded by the panel.

(5) Results of complete project evaluations.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on economic development, labor-management relations, employment security, and other related issues. The chair of the panel shall appoint an advisory research council.

(i) The advisory research council may, in addition to performing any other duty, conduct a review of panel policies with the goal of developing an improved process for developing, funding, and implementing panel contracts as described in this section. This review may include, but shall not be limited to, an examination of all of the following:

(1) The necessity for minimum training hours.

(2) The ratio between fixed classroom training and structured onsite training.

(3) Training across job classifications within the same industry base.

(4) Voluntary training after hours.

(5) Grievance processes.

(6) Reimbursement timelines.

(7) Contract approval, amendment, and modification processes.

On or before April 1, 1996, the panel shall submit an interim report to the Legislature that contains the advisory council's recommendations for an improved contracting process and addresses the factors listed above. On or before December 31, 1996, the panel shall submit a final report to the Legislature that contains the advisory council's recommendations on that subject.

(j) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, as determined by the Trade and Commerce Agency, in accordance with the priorities for employment training programs set forth in paragraph (2) of subdivision (c) of Section 10200.

(k) Coordinate and consult regularly with business groups and labor organizations, the State Job Training Coordinating Council, the State Department of Education, the office of the Chancellor of the California Community Colleges, the Employment Development Department, and the Trade and Commerce Agency.

(*l*) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(m) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that information would result in an unfair competitive disadvantage to the employer supplying the information. In no case shall the panel withhold information from the public regarding its operations, procedures, and decisions which would otherwise be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) Review and comment on the budget and performance of any program, project, or activity funded by the panel utilizing funds collected pursuant to Section 976.6.

SEC. 4. Section 10206 of the Unemployment Insurance Code is amended to read:

10206. (a) The panel may allocate money in the fund for any of the following purposes:

(1) Reimbursement of reasonable training costs, and administrative costs incurred by contractors. In making a determination of costs to be reimbursed under this paragraph, the panel may allocate funds in accordance with any of the following methods:

(A) For purposes of providing simplified fixed-fee performance contracts, a flat rate per hour for categories of training that are substantially similar with respect to content, methodology, and duration, as determined by the panel, not to exceed the reasonable and normal costs for the training. The panel shall periodically adjust the standardized rates established pursuant to this paragraph to reflect changes in training costs.

(B) A complete review of the proposal and its costs, including a budget listing the planned costs of training, including personnel, fringe benefits, equipment, supplies, fees for consulting or administrative services, and other costs attributable to training; the services provided by subcontractors; the length and complexity of the training; the method of training; the wages and occupations following training; whether the trainees are new hires or retrainees; and the cost of similar training that the panel has funded previously. The cost of administration shall not exceed 15 percent of the training costs under this paragraph, except that for new hire training the

panel may fund administrative costs of up to 25 percent of the training cost.

(C) The panel may modify the specific requirements of this paragraph as they apply to employers or contractors proposing projects that involve training for a significant number of small employers in the same project.

(D) A contractor is prohibited from utilizing any funds earned or paid as advances or progress payments for the purpose of making payments to any other individual or entity, either directly or indirectly, for costs incurred as a finder's fee or for other compensation related to the predevelopment or development phase of a training program, which is based on a percentage of the preliminary or final panel award to the contractor for the training project.

(2) Costs of program administration incurred under this chapter. These costs shall be reviewed annually by the Department of Finance and the Legislature and determined through the normal budgetary process.

The panel's administrative costs, exclusive of the cost of administering Section 976.6, shall not exceed 15 percent of the amount annually available for expenditure by the panel. Expenditures for marketing, research, and evaluations provided under contract to the panel under paragraph (1) that otherwise would have been provided directly by the panel shall not be included in this limitation.

(3) Service related to the purposes of this chapter provided by the Small Business Development Centers pursuant to an interagency agreement with the Trade and Commerce Agency.

(b) For all training contracts, the panel shall establish requirements for in-kind contributions by either the contractor or the employer that reflect a substantial commitment on the part of the contractor or the employer to the value of the training. In developing these requirements, the panel shall take into account the ability of the contractor or the employer, because of size or financial condition, to make any contribution, and the ability of the Employment Training Fund to meet the demand for training authorized by this chapter. Contributions shall be evaluated against plans required in subparagraph (A) of paragraph (2) of subdivision (b) of Section 10201 to sustain a commitment to workplace training after the contract ends. In developing policies regarding in-kind contributions, the panel shall hold public hearings.

(c) In order to encourage successful new hire training, the panel shall develop a new hire cost reimbursement system. The new hire cost reimbursement system shall recognize the additional risk attendant to new hire training if the contractor successfully meets at least 60 percent of the training and placement goals of a new hire contract. The reimbursement system authorized by this subdivision shall discourage excessive overenrollment at the beginning of the

contract, and shall not provide reimbursements if the training and placement goals are achieved primarily through modification of the original contract. The new hire cost reimbursement system provided for in this subdivision shall remain in effect only until December 31, 1995.

SEC. 5. Section 10206.5 is added to the Unemployment Insurance Code, to read:

10206.5. (a) The Bureau of State Audits shall conduct or contract for a comprehensive management review and evaluation of the panel. This review shall take account of all existing performance evaluations and shall include, but not be limited to, all of the following:

(1) The contracting policies, procedures, and regulations of the panel.

(2) The panel's decisionmaking processes for contracts.

(3) The cost and efficiency of the administration of internal panel contracts.

(4) The methods and procedures involved in setting the panel's internal administrative and procedural regulations.

(5) The internal administrative procedures and policies of the panel.

(6) Findings and recommendations for statutory and procedural changes necessary to enable the panel to effectively distribute contracts in accordance with the legislative findings and declarations specified in Section 10200.

(b) The Bureau of State Audits shall submit the findings and recommendations of the review to the Legislature on or before October 1, 1996.

SEC. 6. Section 10214.5 of the Unemployment Insurance Code is amended to read:

10214.5. (a) The panel may allocate up to 20 percent of the annually available training funds for the purpose of funding special employment training projects for the purposes of any of the following:

(1) Supporting retraining for frontline workers, as defined in subdivision (a) of Section 10200, in occupations that pay 100 percent of the state or regional average hourly wage when a business is difficult to serve under the panel's standard project format; provided that the employment may not result in earnings of less than 95 percent of the state average hourly wage.

(2) Encouraging the development of new industries, including the electric and clean fuel vehicle industry and other advanced transportation technology industries, that contribute to high-skilled employment and economic vitality in California.

(3) Supporting efforts that address the training and employment of workers affected by defense industry cutbacks and military base closures.

(4) Stabilizing employment in fields where there is a demonstrated deficit of trained employees and clear career advancement opportunities.

(5) Supporting small business entrepreneurial training in business management and related skills for owners to enhance the competitive position of businesses with at least one full-time but fewer than 10 full-time employees that are registered with the Employment Development Department and have paid unemployment insurance taxes for at least six months prior to contract development. The panel may waive, if necessary, the minimum wage requirements pursuant to subdivision (g) of Section 10201, and employment retention provisions specified in subdivision (f) of Section 10209, and instead require that the entrepreneurial business, at a minimum, retain the same number of full-time workers it employed prior to the start of training for at least 90 days after the completion of training by the owner.

Notwithstanding any other provision of this chapter, participants in these projects need not meet the same eligibility criteria as outlined in paragraph (1) of subdivision (a) of Section 10200 and subdivision (b) of Section 10201. In addition, the panel may allocate funds under this section for the development of training materials and training programs that contribute to the development of new industries in the state.

(b) The panel may allocate up to 15 percent of the funds specified in subdivision (a) for job-related vocational and literacy skills training and the employment of individuals with barriers to full-time, stable employment. These barriers may include, but shall not be limited to, language, basic skills, and occupational literacy barriers to employment. These individuals shall meet the eligibility criteria specified in subdivision (b) of Section 10201. Preference shall be given to contractors that can provide trainees with the comprehensive services necessary to successfully complete training, overcome barriers, secure gainful employment, and become self-sufficient. The panel may waive, if necessary, the eligibility criteria outlined in paragraph (1) of subdivision (a) of Section 10200, the minimum wage requirements pursuant to subdivision (g) of Section 10201, and the employment retention provisions specified in subdivision (f) of Section 10209 and instead require that the trainee has been retained in employment for a minimum of 90 days out of 120 consecutive days after the end of training with no more than three employers. In addition, the panel may allocate funds under this subdivision for reasonable child care and transportation costs for trainees.

(c) The panel shall adopt minimum standards for consideration of proposals to be funded pursuant to this section.

(d) The panel may not delegate its authority to approve contracts written pursuant to this section.

(e) It is the intent of the Legislature in providing the authority for these projects that the panel allocate these funds in a manner consistent with the objectives of this chapter as provided in Section 10200.

SEC. 7. Section 10218.5 of the Unemployment Insurance Code is amended to read:

10218.5. (a) This chapter shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 2002, deletes or extends that date.

(b) The panel may enter into contracts that permit employment training through June 30, 2002, however, no contract shall have a termination date that extends beyond December 31, 2002.

(c) In the event a later enacted statute does not extend the January 1, 2002, repeal date of this chapter, the panel shall enter into an agreement with another state agency, to be selected by the Governor, that shall act on behalf of the panel for the sole purpose of contract administration, which shall include, but is not limited to, monitoring performance, generating amendments to downsize the contracts, closing out contracts, auditing contracts, and making payment for any contracts that extend beyond January 1, 2002.

(d) Any agency acting on behalf of the panel pursuant to this section may seek a budget appropriation or augmentation for both the administration of the program and payment to contractors.

SEC. 8. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Employment Training Fund to the Bureau of State Audits to conduct or contract for the performance audit as required by this act.

CHAPTER 866

An act to add Section 51.6 to the Civil Code, relating to civil rights.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 51.6 is added to the Civil Code, to read:

51.6. (a) This section shall be known, and may be cited, as the Gender Tax Repeal Act of 1995.

(b) No business establishment of any kind whatsoever may discriminate, with respect to the price charged for services of similar or like kind, against a person because of the person's gender.

(c) Nothing in subdivision (b) prohibits price differences based specifically upon the amount of time, difficulty, or cost of providing the services.

(d) The remedies for a violation of this section are the remedies provided in subdivision (a) of Section 52. However, an action under this section is independent of any other remedy or procedure that may be available to an aggrieved party.

(e) This act does not alter or affect the provisions of the Health and Safety Code, the Insurance Code, or other laws that govern health care service plan or insurer underwriting or rating practices.

CHAPTER 867

An act to add and repeal Chapter 3 (commencing with Section 9000) of Title 9 of Part 3 of the Penal Code, relating to electronic monitoring.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The people of California are being victimized by crimes committed by persons released into the community on probation, on parole from the state prison and the Department of the Youth Authority, and from jails.

(b) The extent of this victimization is demonstrated by the fact that between 50 and 70 percent of all parolees of the Department of Corrections are returned to prison within one year of release, either for a violation of the terms of parole or for conviction of a new crime. In addition, the Director of Corrections has stated during testimony before the Legislature that the acts that result in reincarceration are serious.

(c) Authoritative studies lead the people of California to reasonably believe that similar violations are being committed by many persons on probation.

(d) Parole and probation, if properly constituted by the state and local government, serve the interests of the people because parole and probation permit the people lawful authority to supervise offenders who have been released into the community.

(e) Without the lawful authority to supervise persons on parole and probation, the people would be at greater risk of victimization because persons released would be under no supervision of lawfully constituted authority.

(f) The people of California have a reasonable expectation of personal safety that is violated when parolees or probationers commit new offenses.

(g) The people of California have been justifiably horrified by the abduction and murder of a young woman during 1993 by a parolee

who confessed to this crime. The people have been justifiably concerned by the revelation that the Department of Corrections does not know the whereabouts of thousands of parolees at any given time. Therefore, the people reasonably believe that modern technology may be utilized to enhance oversight of parolees and probationers in order to better determine their proximity to reported crimes.

(h) The people of California reasonably believe that this enhanced knowledge of the whereabouts of parolees and probationers may be utilized by authorities to solve crimes more swiftly and thereby assist in rendering justice to a greater degree than at present.

(i) The people of California reasonably believe that this enhanced ability to solve crimes may be expected to deter many parolees and persons on probation from the commission of crimes, and thereby assist in the successful reintegration of parolees and persons on probation into society.

SEC. 2. Chapter 3 (commencing with Section 9000) is added to Title 9 of Part 3 of the Penal Code, to read:

CHAPTER 3. CONTINUOUS ELECTRONIC MONITORING

9000. (a) Notwithstanding any other provision of law, the board of supervisors in San Diego County and San Mateo County may authorize the county probation department or correctional administrator to create a pilot project to utilize continuous electronic monitoring to electronically monitor the whereabouts of probationers and persons released from jail, as provided by this chapter. The Department of Corrections and the Department of the Youth Authority may participate in the pilot projects authorized by this chapter for parolees and persons released from custody by those departments for continuous electronic monitoring to electronically monitor the whereabouts of those persons in those counties once the board of supervisors establishes a county pilot project as provided by this chapter.

(b) Any program of continuous electronic monitoring established pursuant to this chapter shall have as its primary objective the enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on parole or probation or released from custody.

(c) It is the intent of the Legislature in enacting this chapter to specifically expand the authority of a supervising authority acting pursuant to this chapter to implement a program of monitoring to include a system of continuous electronic monitoring that conforms with the requirements of this chapter.

(d) For the purposes of this chapter, "supervising authority" means the Department of Corrections, the Department of the Youth Authority, and a correctional administrator or probation department

authorized by a board of supervisors to utilize continuous electronic monitoring.

(e) Operation of a pilot project authorized by a county board of supervisors pursuant to this chapter shall be contingent on San Diego County and San Mateo County obtaining sufficient funds for this purpose.

9001. A supervising authority may utilize an electronic transmitting device pursuant to this chapter that has the following attributes:

(a) A device designed to be worn by a human being.

(b) A device that emits a signal as a person is moving or stationary. The signal shall be capable of being received and tracked across large urban or rural areas, statewide, and being received from within structures, vehicles, and other objects to the degree technically feasible in light of the associated cost, design, and other considerations as are determined relevant by the supervising authority.

(c) A device that functions 24 hours per day. The device may have additional requirements related to length of function without upkeep, repair, or interruption of service as required by the supervising authority.

(d) A device that is resistant or impervious to unintentional or willful damage.

9002. A supervising authority shall utilize a system of continuous electronic monitoring pursuant to this chapter that includes the following attributes:

(a) Computer software and hardware architecture that is capable of communicating with the computer systems of law enforcement agencies to the degree required by the supervising authority.

(b) Computer software and hardware and other equipment as may be necessary to identify the location, direction, and speed of movement of persons on parole or probation who are wearing the transmitting device, at any given time of the day. Identification of this information shall be made at time intervals for each person as may be established under standards set forth by the supervising authority.

9003. (a) A continuous electronic monitoring system may have the capacity to immediately notify a supervising authority of violations, actual or suspected, of the terms of parole or probation that have been identified by the monitoring system if such a requirement is deemed necessary by the supervising authority with respect to an individual person.

(b) This information may be used as evidence to prove a violation of the terms of parole or probation.

9004. A supervising authority shall establish the following standards as are necessary to enhance public safety:

(a) Standards for the minimum time interval between transmissions of information about the location of the person under

supervision. The standards shall be established after an evaluation of, at a minimum, all of the following:

(1) The resources of the supervising authority.

(2) The criminal history of the person under supervision.

(3) The safety of the victim of the persons under supervision.

In any event, the time interval between individual transmissions of this information shall not exceed five minutes.

(b) Standards for the accuracy of the information identifying the location of the person under supervision. The standards shall be established after consideration of, at a minimum, all of the following:

(1) The need to identify the location of a person proximate to the location of a crime.

(2) Present and emerging capabilities of technology.

(3) Resources of the supervising authority.

(4) The need to avoid false indications of proximity to crimes.

9005. (a) A supervising authority operating a system of continuous electronic monitoring pursuant to this chapter shall establish prohibitions against unauthorized access to, and use of, information by private or public entities as may be deemed appropriate. Unauthorized access to, and use of, electronic signals includes signals transmitted in any fashion by equipment utilized for continuous electronic monitoring.

(b) Devices used pursuant to this chapter shall not be used to eavesdrop or record any conversations, except a conversation between the participant and the person supervising the participant that is to be used solely for the purposes of voice identification.

9006. (a) A supervising authority shall decide which persons shall participate in a system of continuous electronic monitoring administered by that supervising authority. No individual shall be required to participate in a pilot project authorized by this chapter for any period of time longer than the term of imprisonment for which the individual could otherwise be sentenced or, for individuals on parole, the term of parole or five years, whichever is shorter.

(b) The supervising authority shall establish written guidelines that identify those persons released from custody who will be subject to the pilot projects authorized by this chapter. These guidelines shall include the need for enhanced monitoring in comparison to other persons not subject to the pilot projects and the public safety needs that will be served by the enhanced monitoring.

(c) A supervising authority may revoke in its discretion the continuous electronic monitoring of any individual.

(d) Whenever a parole or probation officer, or any other peace officer supervising a participant has reasonable cause to believe that the participant is not complying with the rules or conditions of a continuous electronic monitoring program, or that any electronic monitoring devices are unable to function properly, the peace officer may, under general or specific authorization of the Director of

Corrections, chief probation officer, or correctional administrator, and without a warrant of arrest, take the person into custody.

9007. (a) A supervising authority may charge parolees or persons on probation or released from custody for the additional costs of any form of supervision that utilizes electronic devices that monitor the whereabouts of a person pursuant to this chapter. This authority is not limited solely to the cost of continuous electronic monitoring devices. Inability to pay all or a portion of the costs of the program authorized by this chapter shall not preclude participation in the program, and eligibility for probation, parole, or release from custody shall not be enhanced by reason of ability to pay.

(b) A supervising authority may not charge a parolee or person on probation or released from custody pursuant to subdivision (a) until the person has satisfied all other outstanding base fines, state and local penalties, restitution fines, and restitution orders imposed by a court.

(c) (1) A supervising authority that charges a fee pursuant to subdivision (a) shall establish a schedule of fees that reflects the ability of the person on parole or probation or released from custody to pay.

(2) The person may be returned to custody if he or she willfully fails to pay fees imposed for continuous electronic monitoring pursuant to this section, subsequent to the written notification of the person that the payment has not been received and that return to custody may result.

9008. Contingent on the availability of sufficient funds, the Board of Prison Terms shall submit a report to the Legislature on or before January 1, 2000, that includes all of the following:

(a) Whether the Department of Corrections and the Department of the Youth Authority have established clear objectives for any pilot program of continuous electronic monitoring pursuant to this chapter, in addition to the primary objective of enhanced public safety through the reduction in the number of persons being victimized by persons on parole.

(b) Whether the Department of Corrections and the Department of the Youth Authority have implemented these pilot programs of continuous electronic monitoring that are designed to reduce the incidence of parole revocation due to the commission of crimes by parolees.

(c) How the Department of Corrections and the Department of the Youth Authority might reduce the incidence of parole revocation due to the commission of crimes by parolees through, at a minimum, programs or practices coordinated with a program of continuous electronic monitoring that have been demonstrated by any pilot project created pursuant to this chapter.

(d) Any additional recommendations to the Legislature regarding the use of continuous electronic monitoring as the board may determine are in the interests of enhanced public safety.

9009. (a) The board of supervisors of San Diego County and San Mateo County shall evaluate any pilot project conducted pursuant to this chapter and submit a report on the evaluation to the Legislature on or before January 1, 2000.

(b) This chapter shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

CHAPTER 868

An act to add Article 10 (commencing with Section 15372.200) to Chapter 2.2 of Part 6.7 of Division 3 of Title 2 of the Government Code, relating to tourism.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Article 10 (commencing with Section 15372.200) is added to Chapter 2.2 of Part 6.7 of Division 3 of Title 2 of the Government Code, as added by Senate Bill 256 of the 1995–96 Regular Session of the Legislature, to read:

Article 10. Los Angeles County Tourism Marketing

15372.200. (a) The Legislature recognizes that, because of the size and significant economic impact of the tourism industry on the economy of the County of Los Angeles, it being the second largest economic activity within the county, and due to many independent factors that have adversely affected tourism in the county, it is necessary to empower the tourism industry within the County of Los Angeles to create a governance structure in order to foster marketing efforts directed at specifically attracting tourists to the county.

(b) Recognizing the importance of enabling the private-sector tourism industry within the County of Los Angeles to assess itself in order to fund tourism marketing efforts, this article shall authorize the formation of the Los Angeles County Tourism Selection Committee to be appointed by the Los Angeles County Board of Supervisors, and the Los Angeles County Tourism Marketing Commission, the members of which shall be elected by industry referendum and ex officio appointment, as set forth in this article.

15372.201. For the purposes of this article, the following definitions shall apply:

(a) "County commission" means the Los Angeles County Tourism Marketing Commission.

(b) "County commissioner" means a commissioner of the county commission.

(c) "County selection committee" means the Los Angeles County Tourism Selection Committee described in Section 15372.202.

(d) "Industry category" means the classifications within the tourism industry designated by the county selection committee, or if not so designated, then as follows:

(1) Accommodations.

(2) Restaurants and retail.

(3) Attractions and recreation.

(4) Transportation and travel services.

(e) "Referendum" means any vote by mail ballot of measures recommended by the county commission in accordance with the procedure set forth in Section 15372.210.

15372.202. (a) The Los Angeles County Board of Supervisors shall appoint the Los Angeles County Tourism Selection Committee to consist of persons, or principals of entities, from within the industry categories that are to be assessed, based upon recommendations from established industry associations and destination marketing organizations within Los Angeles County.

(b) The county selection committee shall consist of 24 representatives, with no fewer than three from each industry category. The county selection committee shall appoint a chair and any other officers it deems advisable.

(c) The county selection committee shall convene within 150 days after the effective date of this chapter. Not later than 150 days following the initial convening of the committee, the committee shall issue a report and recommendations listing the following:

(1) Industry segments that will be included in the initial referendum.

(2) Percentage of funds to be levied against each industry category and segment. To the extent possible, the percentages shall be based upon quantifiable industry data. Funds to be levied against businesses shall bear an appropriate relationship to the benefit derived from travel and tourism by those businesses.

(3) Assessment methodology and rate of assessment within each industry segment, that may include, but not be limited to, a percentage of gross revenue or a per transaction charge.

(4) Businesses, if any, within a segment to be assessed at a reduced rate, which may be set at zero, whether temporarily or permanently, because they do not sufficiently benefit from travel and tourism.

(5) Initial slate of proposed elected commissioners. The number of commissioners elected from each industry category shall be determined by the weighted percentage of assessments from that category.

(d) Nothing in this section shall preclude the selection committee from setting the assessment rate for a business within a segment at a lower rate, which may be set at zero, than a rate applicable to other

businesses within that segment if the selection committee makes specific findings that the lower rate should apply due to unique geographical, financial, or other circumstances affecting the business. No business for which a zero assessment rate is set pursuant to this subdivision shall be sent a ballot or entitled to participate in the initial referendum, or in any subsequent referendum in which its rate of assessment is set at zero.

(e) The committee members for each industry category, also referred to as a subcommittee, shall prepare a recommendation for the entire committee on how the items specified in subdivision (c) should be determined for the industry segments within their industry category. The recommendations shall not include a discussion of industry category levies, which shall be determined solely by the committee. In the event that the subcommittee cannot agree on one or more of the items specified in subdivision (c), no recommendation shall be given in that category. The recommendations shall be presented to the full committee, which shall address each of the items contained in subdivision (c).

(f) In order to be assessed, an industry segment shall be defined with sufficient clarity to allow for the cost effective identification of assessed businesses within that segment.

(g) It shall be the responsibility of the county selection committee to advertise widely the selection committee process and to schedule public meetings for potential assessed businesses to provide input to the selection committee.

(h) The selection committee process and report shall be exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

(i) The Los Angeles Convention and Visitors Bureau shall be asked to supply staff support to the county selection committee. The Office of Tourism within the Trade and Commerce Agency shall not be required to supply staff support to the county selection committee.

15372.203. (a) Based upon the criteria established by the county selection committee, the county commission shall be established by industry referenda within the county conducted in accordance with subdivision (d) and Section 15372.204, and shall include certain ex-officio voting members provided for in subdivision (d).

(b) The county commission shall be a private, nonprofit corporation under the direction of a board of county commissioners. The activities and purposes of the county commission shall be to promote tourism to and within the County of Los Angeles through marketing and other promotional efforts.

(c) The board of county commissioners shall function as the board of directors for purposes of the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code).

(d) The board of county commissioners shall consist of 24 members to be elected by industry category by referendum, from among individuals who are professionally active in the tourism industry, representing diverse elements of the industry. In addition, the board of county commissioners shall include the salaried chief executive officer of each convention and visitors bureau within Los Angeles County that operates either as a part of municipal government or under contract with any municipality within the county. The elected county commissioners need not be limited to representatives of assessed businesses.

(e) In the referendum process, regardless of the number of ballots received for a referendum, the nominee for each county commissioner slot with the most weighted votes, based upon assessment levels, from businesses within that industry category shall be elected county commissioner. Assessed businesses shall vote only for county commissioners representing their industry category.

(f) All elected county commissioners shall serve three-year terms, except that one-third of the county commissioners originally elected shall serve a one-year term, one-third shall serve a two-year term, and the remainder shall serve a three-year term. Every year thereafter, one-third of the county commissioners shall be elected by industry referendum. No county commissioner may serve for more than two consecutive terms.

(g) In the event that a county commissioner resigns, dies, or is removed from office during his or her term, the county commission shall appoint a replacement from the same industry category that the previous county commissioner represented, and that county commissioner shall fill the remaining term of the previous county commissioner.

(h) The county selection committee shall determine the initial slate of candidates for elected county commissioners. Thereafter, the county commissioners, by adopted resolution, shall nominate a slate of candidates, and shall include any additional candidates who may be placed on the referendum by assessed businesses under a procedure to be adopted by the county commission.

(i) The county commissioners shall annually, within 60 days before commencement of the fiscal year of the county commission, elect from among the county commissioners a chair, vice-chair, secretary, and chief financial officer.

(j) No person shall receive compensation as a county commissioner, but each county commissioner shall receive reimbursement from county assessments for reasonable expenses incurred while on authorized county commission business.

15372.204. (a) The county commission shall be a private, nonprofit corporation, and shall not be part of state or county government, nor be construed in any other manner as a public entity.

(b) No person employed by the county commission shall be a state or county employee.

(c) The procedures adopted by the county commission shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

15372.205. (a) Not later than six months following its formation, the county commission shall adopt procedures concerning the operation of the county commission in order to provide due process rights for assessed businesses.

(b) The county commission shall annually provide to all assessed businesses a report on the activities and budget of the county commission including, but not limited to, income and expenses, the fund balance, a Summary Los Angeles County Tourism Marketing Plan, and a report of progress in achieving the goals set forth in the plan.

(c) The county commission shall maintain a report on the percentage assessment allocation between industry categories and industry segments. The report shall also specify the reasons and methodology used for the allocations. This report shall be updated each time the assessment allocations are amended. The report shall be made available to any assessed business, but all confidential information provided shall remain confidential and not be released to any person or entity unless authorized by the county commission.

(d) (1) The county commission shall annually prepare, or cause to be prepared, a Los Angeles County Tourism Marketing Plan. The county commission may amend the plan at any county commission meeting. All expenditures by the county commission shall be consistent with the marketing plan.

(2) The plan shall promote travel to and within Los Angeles County, and shall include, but need not be limited to, the following:

(A) An evaluation of the previous year's budget activities.

(B) Review of state, county, and local tourism trends, conditions, and opportunities.

(C) Target audiences for tourism marketing expenditures.

(D) Marketing strategies, objectives, and targets.

(E) Budget for the current year.

(3) In developing the plan, the county commission shall, to the maximum extent feasible, do both of the following:

(A) Seek advice and recommendations from all segments of the county's travel and tourism industry and from all geographic regions of the county.

(B) Harmonize, as appropriate, the plan with the travel and tourism marketing activities and objectives of the various industry segments and geographic regions.

(e) The county commission may establish committees and may appoint noncommissioners to its committees.

15372.206. County commissioners and employees of the county commission shall not be individually liable in any way to any person for any good faith activity of the county commission, county commissioners, or employees.

15372.207. The county commission may be terminated at any time after the initial four years of operation by referendum of the assessed businesses. Notice of the termination shall be mailed to all assessed businesses. Upon termination, the county commission shall continue its existence as a nonprofit corporation for purposes of winding up its affairs and dissolution.

15372.208. (a) The county may require assessed businesses to maintain books and records that reflect their income or sales as reflected in the assessment, and to furnish the county treasurer/tax collector with any information that may, from time to time, be requested by the treasurer/tax collector, and to permit the inspection by the treasurer/tax collector of portions of books and records that relate to the amount of assessment.

(b) Information pertaining to assessed businesses obtained by the county treasurer/tax collector pursuant to this chapter shall be confidential and shall not be disclosed except to a person with authority to obtain the information, any attorney hired by the county treasurer/tax collector who is employed to give legal advice upon that information, or by court order.

(c) Information obtained by the county treasurer/tax collector in order to determine the assessment level for an assessed business shall be exempt from the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

15372.209. (a) The county commission shall recommend the assessments approved by the industry referendum to the board of supervisors. Upon approval by the board of supervisors, the Los Angeles County Treasurer/Tax Collector shall collect all assessments so approved. In that collection effort, the county treasurer/tax collector may utilize its police powers, and pursue actions and penalties set forth in Article 8 (commencing with Section 15372.120) in the collection of all county assessments.

(b) Direct and actual expenses associated with the collection of assessments by the county commission or the county treasurer/tax collector shall be reimbursed from the assessments collected.

15372.210. (a) No referendum required under this article shall be undertaken until any of the following occurs, whichever is earliest:

(1) A statewide referendum held pursuant to this chapter has obtained a passing vote in the County of Los Angeles.

(2) Two statewide referenda have been held pursuant to this chapter.

(3) July 1, 1998.

(b) Referenda required under this article shall be conducted in a similar manner as provided in Article 6 (commencing with Section 15372.100) except as follows:

(1) The county commission shall undertake all duties, and act in all respects, in place of the California Tourism Marketing Commission, and either the county or the county treasurer/tax

collector, as designated in this article, shall act in place of the Secretary of Trade and Commerce.

(2) The initial assessment target for the county commission shall be set by the county selection committee.

(3) The first referendum shall be initiated by industry members, with all costs of marketing and promoting of the initial referendum to be provided by the tourism industry.

(4) Each referendum may cover one or more of the following subjects:

(A) Assessment level based upon specified assessment formula.

(B) Amended industry segment allocation formulae.

(C) Percentage allocation of assessments between industry categories and segments.

(D) Election of county commissioners subject to election by referendum.

(E) Termination of the county commission.

(F) Whether to establish, continue, or reestablish an assessment.

(5) The costs of all marketing and promoting of all referenda following the initial referendum shall be paid by the county commission from assessments collected. The county commission may reimburse those who have contributed to the costs of the initial referendum from proceeds raised from assessments collected from the initial referendum.

15372.213. Assessments shall be set by the county commission, as follows:

(a) Each industry category shall establish a committee to determine the following within its industry category: industry segments, assessment formulae for each industry segment, and any type of business exempt from assessment. The committees shall be selected by the county commission based upon recommendations from the tourism industry. Committee members need not be commission members.

(b) The committee recommendations shall be presented to the county commission. The county commission may adopt a resolution specifying one or more of the items listed in subdivision (a), plus an allocation of the proposed assessment. The county commission shall consider the recommendations of any committee.

(c) The initial industry category and industry segment allocations shall be as set in the Selection Committee Report required by subdivision (b) of Section 15372.66. Changes to the industry segment allocation formulae may be recommended to the county commission by a segment committee. At the same meeting, the county commission may amend the percentage allocations among industry categories. Any item discussed in this section that is approved by resolution of the county commission, except amendments to the percentage allocations among industry categories, shall be placed on the next referendum, and adopted if approved by the weighted

majority of votes cast. All industry segment members shall be subject to any duly approved assessments.

(d) Upon approval by referendum, and recommendation to the county by the county commission, the county treasurer/tax collector shall calculate the assessments due for each assessed business and mail an assessment bill to each assessed business. The county treasurer/tax collector may stagger the assessment collection throughout the year, and charge businesses a prorated amount of assessment based on the staggered assessment period. The county treasurer/tax collector shall not divulge the amount of assessment or weighted votes of any assessed businesses, except as part of an assessment action.

15372.214. An assessed business may appeal an assessment to the county commission upon the basis that the business does not meet the definition established for an assessed business within its industry segment, or that the level of assessment is incorrect. If the error is based upon failure of the business to provide the required information in a timely manner, the county commission may recommend to the county a fine to be collected by the county treasurer/tax collector as a condition of correcting the assessment.

15372.216. (a) The county treasurer/tax collector shall collect the assessment from all assessed businesses, and, in collecting an assessment, may bring enforcement actions.

(b) Funds collected shall be deposited into an account or accounts for the benefit of the county commission, subject to the county treasurer/tax collector's authority under Section 15372.209 to reimburse his or her office for direct and actual expenses associated with the collection of assessments. These accounts shall not be accounts of the state or county government.

(c) The county treasurer/tax collector shall mail to each business identified pursuant to subdivision (a) of Section 15372.213 a form requesting information necessary to determine the assessment for that business. Any business failing to provide this information in a timely manner shall be assessed an amount determined by the county treasurer/tax collector to represent the upper assessment level for that segment.

(d) The assessed funds shall be audited annually.

(e) The assessed funds shall be under the control of the county commission, which shall spend the funds consistent with commission policies and the Los Angeles County Tourism Marketing Plan. Neither the state nor the county shall have any interest in the fund except the general interest that the state has in nonprofit corporations.

(f) Direct and actual expenses incurred by the county in implementing this article shall be reimbursed from the assessed funds.

15372.217. (a) Any assessment levied as provided in this article is a debt of the business so assessed and shall be due and payable at

the direction of the county treasurer/tax collector. If any assessed business fails to pay any assessment, the county treasurer/tax collector may file a complaint in a state court of competent jurisdiction for the collection of the assessment.

(b) If any assessed business that is duly assessed pursuant to this article fails to pay the assessed amount by the due date, the county treasurer/tax collector may add to the unpaid assessment an amount not to exceed 10 percent of the unpaid assessment to defray the cost of enforcing the collection of the unpaid assessment. In addition to payment for the cost of enforcing a collection, the assessed business shall pay a penalty equivalent to the lesser of either the maximum amount authorized by Section 1 of Article XV of the California Constitution or 5 percent for each 30 days the assessment is unpaid, prorated over the days unpaid, commencing 30 days after the notice has been given to the assessed business of its failure to pay the assessment on the date required, unless the county treasurer/tax collector determines that the failure to pay is due to reasonable cause beyond the control of the assessed business.

(c) (1) The county treasurer/tax collector may require assessed businesses to deposit in advance the following amounts:

(A) An amount for necessary expenses.

(B) An amount that shall not exceed 25 percent of the assessment to cover costs that are incurred prior to the receipt of sufficient funds from the assessment.

(2) The amount of any deposit that is required shall be based upon the estimated assessment for the assessed business.

(d) In lieu of requiring advance deposits, or in order generally to provide funds for defraying administrative expenses or the expenses of implementing the Los Angeles County Tourism Marketing Plan until sufficient moneys are collected for this purpose from the payment of the assessments that are established pursuant to this article, the county commission may receive and disburse for those express purposes, contributions that are made by assessed businesses. However, if collections from the payment of established assessments are sufficient, the county commission may authorize the repayment of contributions, or authorize the application of the contributions to the assessment obligations of persons who made the contributions.

(e) Upon termination of the county commission, any remaining funds that are not required to defray commission expenses shall be returned, upon a pro rata basis, to all persons from whom the assessments were collected.

(f) Any check or warrant that is drawn against the funds of the county commission that remains unclaimed or uncashed for a period of six months from the date of issuance shall be canceled and the money retained for disbursement to the original payee or claimant upon satisfactory identification for a period of one year from the time the check or warrant is canceled. The money so retained, if not claimed within the period of one year, shall be used for

administration of the county commission and in furtherance of the Los Angeles County Tourism Marketing Plan.

15372.218. The county commission shall separately contract with the Los Angeles Convention and Visitors Bureau to serve as its administrative contractor in the promotion, implementation, and administration of the Los Angeles County Marketing Plan adopted by the county commission. If the county commission believes that the administration of the county marketing plan will be promoted thereby, the commission may borrow money, with or without interest, to carry out the provisions of the county marketing plan, and may hypothecate anticipated assessment collections.

15372.219. This article is subject to Article 8 (commencing with Section 15372.120) and Article 9 (commencing with Section 15372.130), except that, as to Article 8, either the county or the county treasurer/tax collector, as designated in this article, shall act in the place of the Secretary of Trade and Commerce in all respects.

15372.220. A business is exempt from the assessments provided for in this chapter if the business is a travel agency or tour operator that derives less than 20 percent of its gross revenue from travel and tourism occurring within the state. A travel agency or tour operator that qualifies for this exemption may pay the assessment by filing a written request with the commission indicating its desire to be categorized as an assessed business.

15372.221. This article shall become operative only upon adoption by the Los Angeles County Board of Supervisors of a resolution by majority vote making the provisions of this article applicable in that county.

SEC. 2. The Legislature finds and declares that, due to the unique circumstances of the tourism industry in the County of Los Angeles, a general statute, within the meaning of Section 16 of Article IV of the California Constitution, cannot be made applicable, and that, therefore, this special statute is necessary.

SEC. 3. No reimbursement is required by Section 15372.219 of the Government Code, as added by this act, pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act shall only take effect if Senate Bill 256 of the 1995–96 Regular Session of the Legislature is enacted.

CHAPTER 869

An act to add Chapter 27.5 (commencing with Section 17860) to Part 10 of, and to add Chapter 14.8 (commencing with Section 67359.10) to Part 40 of, the Education Code, relating to educational technology, and making an appropriation therefor.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) California can continue as an economic power if the state's schools and colleges are equipped to train students in the use of computers and other rapidly advancing technologies.

(2) California currently ranks far behind other states in its per-pupil investment in computers and related technological infrastructure.

(3) Installing wiring in the state's schools, libraries, and universities necessary to connect to a statewide telecommunications network will promote federal and private investment in the state's telecommunications infrastructure, including hardware, software, cable, and related equipment.

(4) Schools and colleges receive more than half a billion dollars annually from the California State Lottery Education Fund for nonrecurring costs, budgeted at the discretion of each local school board and the governing boards of the postsecondary systems.

(5) By utilizing revenue bonds, to be repaid from a dedicated portion of lottery revenues, to finance the current cost of assembling computer networks, school districts and colleges choosing to participate in the Archie-Hudson and Cunneen School Technology Revenue Bond Act and the Archie-Hudson and Cunneen Postsecondary Education Technology Revenue Bond Act, established by this act, can enhance student learning and assist California in regaining its competitive position as a leader in education in the nation without increased revenue to the state.

(b) It is the intent of the Legislature to encourage schools to adopt guidelines using the following criteria:

(1) Technology should be used across the curricula to facilitate a student-centered learning environment. To achieve this learning environment, computers, communication networking, and multimedia equipment must be fully integrated into California's

schools so that this technology is available when and where it is needed to improve learning. This technology will provide tools for effectively presenting course materials, as well as resources for helping students learn how to access, analyze, and interpret information, and communicate their findings.

(2) A new educational culture is encouraged, including a creative student-based learning process, the introduction of multimedia technology for learning a more participatory role for students, involvement of the parent, civic, and business communities in support of instructional development, a broader role for teachers as participants and advisers to students, and a connection to the future that motivates a desire to explore and learn.

(3) As rapidly as possible, schools should promote the creation of model classrooms that serve as production centers for students using multimedia technologies in creative, participatory learning projects.

(c) While the funding mechanism established in the Archie-Hudson and Cunneen School Technology Revenue Bond Act and the Archie-Hudson and Cunneen Postsecondary Education Technology Revenue Bond Act is directed to educational technology infrastructure development, the Legislature recognizes the importance of providing teachers and faculty with training in the use of new instructional technologies. It is the intent of the Legislature that school and college districts and universities participating in these bond acts provide that training for teachers and faculty through other funding sources.

SEC. 2. Chapter 27.5 (commencing with Section 17860) is added to Part 10 of the Education Code, to read:

CHAPTER 27.5. THE ARCHIE-HUDSON AND CUNNEEN SCHOOL TECHNOLOGY REVENUE BOND ACT

17860. It is the intent of the Legislature in enacting this act to provide a source of financing for the development of California public schools' educational technology infrastructure for the use of technology in instruction through the use of state revenue bonds repaid from a dedicated portion of funds allocated to school districts from the California State Lottery Education Fund pursuant to Section 8880.5 of the Government Code. It is further the intent of the Legislature in enacting this act to further the purposes of the California State Lottery Act of 1984 as approved by the voters on November 6, 1984.

17861. For the purpose of this article the following terms have the following meanings:

(a) "Act" means the Archie-Hudson and Cunneen School Technology Revenue Bond Act.

(b) "Authority" means the California School Financing Authority established pursuant to Section 17872.

(c) "Bond" means bonds, notes, bond anticipation notes, commercial paper, and any other evidences of indebtedness.

(d) "Fund" means the School Technology Pooled Revenue Bond Fund established pursuant to subdivision (c) of Section 17862.

(e) "School district" means school district or county office of education.

17862. (a) Notwithstanding Section 17899.3, the authority may issue bonds exclusively for the purposes of this act, provided that the total amount of bonds issued and outstanding at any time under this act shall not exceed four hundred million dollars ($400,000,000). Authorization for the issuance of bonds under this act shall become operative after July 1, 1997, upon receipt by the authority of repayment pledges made by school districts, pursuant to Section 17863, which, when the pledges from all school districts are combined, are equal to or greater than five million dollars ($5,000,000). The authority shall not issue bonds for any project that cannot be supported by the repayment pledges of school districts.

(b) In administering this act, the authority shall meet all of the requirements established by law for the issuance, holding, and repayment of revenue bonds by the authority, including those set forth in Chapter 28 (commencing with Section 17870), unless otherwise provided for in this act.

(c) Revenues from the sale of bonds issued pursuant to this act shall be deposited in the School Technology Pooled Revenue Bond Fund, which fund is hereby established in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated without regard to fiscal year for the purposes of this chapter. The authority shall allocate moneys to each participating school district from the fund.

(d) Allocations from the fund shall be used by school districts only for the purpose of establishing computer-based networks and telecommunications systems for instructional purposes, including the procurement and installation of computer hardware and software, multimedia audio, video, and data transfer equipment, and wiring, cabling, and other equipment necessary to establish network connectivity, and any planning and installation costs associated with establishing and installing the networks.

(e) The length of terms of the bonds issued pursuant to this act shall be less than the useful life of the equipment to be purchased as set forth in subdivision (d).

17863. (a) Notwithstanding any other provision of law, a school district may participate in this act, if the governing board of the school district adopts a resolution approving that participation. A participating school district shall pledge a portion of the lottery revenues allocated annually to the school district from the California State Lottery Education Fund as a dedicated revenue source to repay bonds issued by the authority under the act.

(b) A school district may pledge an amount up to the equivalent of 25 percent, but not more than 25 percent, of the allocation to the school district for the 1996–97 fiscal year from the California State Lottery Education Fund.

(c) A participating school district shall guarantee the repayment of bonds issued under this chapter by providing instructions to the Controller as follows:

(1) Informs the Controller of its election to participate in this act.

(2) Authorizes the Controller to pay the portion of the school district's annual allocation of funds from the California State Lottery Education Fund to the bond trustee identified by the school district for the repayment of the school district's share of the bonds issued under this chapter.

(3) Contains a transfer schedule that sets forth the amounts of funds, which shall be equal to the amount of funds pledged pursuant to subdivisions (a) and (b) of this section, to be transferred by the Controller to the trustee from the funds to be allocated to that school district from the California State Lottery Education Fund.

17863.5. The Controller shall pay bond trustees in accordance with the instructions received pursuant to Section 17863. The Controller shall make that payment only from moneys in the California State Lottery Education Fund allocated to that school district. The Controller is not authorized to pay a bond trustee any amount in excess of a district's allocation from the California State Lottery Education Fund.

17864. Nothing contained in this chapter shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit of the state.

Notwithstanding any other provision of law, should lottery funds pledged to repay bonds issued pursuant to this act be insufficient to repay the revenue bonds, negotiable notes, or negotiable bond anticipation notes sold to finance projects and related interest and expenses, moneys in the General Fund shall not be available as an alternative source of repayment.

17865. The State Department of Education shall include in its annual survey of schools on the use of lottery funds, the amount of lottery revenues expended to repay bonds issued pursuant to this act.

SEC. 3. Chapter 14.8 (commencing with Section 67359.10) is added to Part 40 of the Education Code, to read:

CHAPTER 14.8. THE ARCHIE-HUDSON AND CUNNEEN POSTSECONDARY EDUCATION TECHNOLOGY REVENUE BOND ACT

67359.10. It is the intent of the Legislature in enacting this act to provide a source of financing for the development of California's postsecondary educational institutions' educational technology infrastructure for the use of technology in instruction. It is further the intent of the Legislature in enacting this act to further the purposes

of the California State Lottery Act as approved by the voters on November 6, 1984.

67359.11. For the purpose of this chapter the following terms have the following meaning:

(a) "Act" means the Archie-Hudson and Cunneen Postsecondary Education Technology Revenue Bond Act.

(b) "Authority" means the State Public Works Board.

(c) "Bond" means bonds, notes, bond anticipation notes, commercial paper, and any other evidences of indebtedness.

(d) "Fund" means the Postsecondary Education Technology Pooled Revenue Bond Fund established pursuant to subdivision (c) of Section 67359.12.

67359.12. (a) The authority may issue bonds for the purposes of this act, provided that the total amount of bonds issued and outstanding at any time under this act shall not exceed one hundred million dollars ($100,000,000). Authorization for the issuance of bonds under this act shall become operative after July 1, 1997, upon receipt by the authority of repayment pledges made by the University of California, the California State University, or community college districts, pursuant to Section 67359.13, which, when the pledges from all of these institutions of higher education are combined, are equal to or greater than one million dollars ($1,000,000). The authority shall not issue bonds for any project under this act that cannot be supported by the repayment pledges under this section.

(b) In administering this act, the authority shall meet all of the requirements established by law for the issuance, holding, and repayment of revenue bonds by the authority, including Chapter 3.8 (commencing with Section 15820.50) of Part 10b of Division 3 of Title 2 of the Government Code, unless otherwise provided for in this act.

(c) Revenues from the sale of bonds issued pursuant to this act shall be deposited in the Postsecondary Education Technology Pooled Revenue Bond Fund, which fund is hereby established in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated without regard to fiscal year for the purposes of this chapter. The authority shall allocate moneys to the University of California, the California State University, and community college districts from the fund.

(d) Allocations from the fund shall be used by the University of California, the California State University, and community college districts only for the purpose of establishing computer-based networks and telecommunications systems for instructional purposes, including the procurement and installation of computer hardware and software, multimedia audio, video, and data transfer equipment, and wiring, cabling, and other equipment necessary to establish network connectivity, and any planning and installation costs associated with establishing and installing the networks.

(e) The length of terms of the bonds issued pursuant to this act shall be less than the useful life of the equipment to be purchased as set forth in subdivision (d).

67359.13. (a) Notwithstanding any other provision of law, the University of California, the California State University, and community college districts may participate in this act, if the Regents of the University of California, the Trustees of the California State University, or the governing board of each community college district, respectively, adopt a resolution approving that participation. A participating institution of higher education shall pledge a portion of the lottery revenues allocated annually from the California State Lottery Education Fund to the University of California, the California State University, and community college districts as a dedicated revenue source to repay bonds issued by the authority under the act.

(b) The University of California, the California State University, and community college districts may each pledge an amount up to the equivalent of 25 percent, but not more than 25 percent, of the allocation to the University of California, the California State University, and community college districts, respectively, in the 1996–97 fiscal year from the California State Lottery Education Fund.

(c) To the extent that the University of California, the California State University, and community college districts participate in the act, the Regents of the University of California, the Trustees of the California State University, and the governing board of each community college district, respectively, shall guarantee the repayment of bonds issued under this chapter by providing instructions to the Controller as follows:

(1) Informs the Controller of its election to participate in this act.

(2) Authorizes the Controller to pay the portion of the entity's annual allocation of funds from the California State Lottery Education Fund to the bond trustee identified by the entity for the repayment of the entity's share of the bonds issued under this chapter.

(3) Contains a transfer schedule that sets forth the amounts of funds, which shall be equal to the amount of funds pledged pursuant to subdivisions (a) and (b) of this section, to be transferred by the Controller to the trustee from the funds to be to be allocated to the University of California, the California State University, or the community college district from the California State Lottery Education Fund.

67359.14. The Controller shall pay bond trustees in accordance with the instructions received pursuant to Section 67359.13. The Controller is not authorized to pay a bond trustee any amount in excess of a pledging entity's allocation from the California State Lottery Education Fund.

67359.15. Nothing contained in this chapter shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit of the state.

Notwithstanding any other provision of law, should lottery funds pledged to repay bonds issued pursuant to this act be insufficient to repay the revenue bonds, negotiable notes, or negotiable bond anticipation notes sold to finance projects and related interest and expenses, the moneys in the General Fund shall not be available as an alternative source of repayment.

67359.16. The University of California, the California State University, and the California Community Colleges shall separately report to the Governor and the Legislature each year by January 1, the amount of lottery revenues expended by each to repay bonds issued pursuant to this act.

CHAPTER 870

An act to add and repeal Sections 41601.1 and 48200.7 of the Education Code, relating to the Compton Unified School District.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 41601.1 is added to the Education Code, to read:

41601.1. (a) Notwithstanding Section 41601, the average daily attendance of pupils subject to Section 48200.7 shall be determined by dividing the total number of days of attendance in all full-time school months in the first period by a divisor of 70, in the second period by 135, and at annual time by 175.

(b) If a district fails to operate its school for 219 days for pupils subject to Section 48200.7, the Superintendent of Public Instruction shall withhold from the district's apportionment based upon average daily attendance a product of 0.00870 times the district's apportionment for each additional day the district would have had to maintain operations to meet the 219 -day requirement.

(c) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. Section 48200.7 is added to the Education Code, to read:

48200.7. (a) The State Department of Education shall identify the three lowest performing elementary schools in the Compton Unified School District for purposes of increasing the school year for pupils enrolled in kindergarten or grades 1 and 2 and for those pupils in any of grades 3 to 5, inclusive, who are performing in mathematics

or English language arts two or more grade levels below the grade in which those pupils are enrolled as determined under subdivision (b).

(b) The determination that a pupil is performing two or more grade levels below the grade in which that pupil is enrolled, shall be based on any combination of the following:

(1) The California Achievement Test-Form E.

(2) The Spanish assessment of basic education.

(3) Proficiency tests required for graduation.

(4) District criterion reference tests based on state curriculum guides.

(c) The Compton Unified School District shall test all pupils in kindergarten and grades 1 to 5, inclusive, in its three lowest performing elementary schools prior to those pupils beginning an extended schoolday or school year program under this section. At the end of the school year the school district shall again test the pupils in kindergarten and grades 1 to 5, inclusive, to determine the grade level at which those pupils are performing.

(d) The State Department of Education shall approve each of the following areas in each elementary school identified as low performing pursuant to subdivision (a):

(1) Curricula.

(2) Testing instruments.

(3) Schoolday length.

(4) Teacher selection, teacher mentoring, and staff development processes.

(e) The State Department of Education shall review teacher compensation, including salary and benefits, in each elementary school identified as low performing pursuant to subdivision (a).

(f) The State Department of Education shall also collect data as to each of the following items:

(1) Instructional materials used by, and made available to, the school.

(2) Teacher capacity.

(3) Any other baseline data deemed necessary by the department.

(g) Instruction provided to pupils subject to this section during schooldays in excess of schooldays offered to other pupils shall be devoted to instruction in basic skills in mathematics and English language arts.

(h) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Compton Unified School District. The facts constituting the special circumstances that distinguish the district from other school districts are:

Pupil performance has been historically and consistently among the poorest in the state. For example, The "Report of Priority Corrective Actions for the Compton Unified School District" published on May 4, 1993, by the Los Angeles County Office of Education notes that pupils of the district "continue to score in the 1st percentile on state assessments." In addition, 70 percent of the pupils of the Compton Unified School District who are promoted from the eighth to the ninth grade do not meet the minimum academic standards to qualify for high school enrollment. Furthermore, a state administrator for the district who was appointed as a condition of the district receiving an emergency loan has been authorized to retain authority for the operation of the district until the district has made specified academic progress.

SEC. 4. (a) It is the intent of the Legislature to appropriate one million five hundred thousand dollars ($1,500,000) in the Budget Act of 1996 and in each year through the Budget Act of 2000.

(b) Notwithstanding any other law, the Compton Unified School District may redirect its existing resources for purposes of extending its schoolday, or school year pursuant to Section 48200.7 of the Education Code.

(c) It is the further intent of the Legislature that any funding provided for the purposes of this act shall not supplant any special education funding provided through the special education program for extended year instruction required as part of a pupil's individualized education plan. The extended year instruction required by this act shall not be a basis for including extended year instruction in a pupil's individualized education plan.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 871

An act to amend Sections 15364.51, 15364.52, 15364.53, and 15364.54 of, to add Chapter 2.2 (commencing with Section 15372.60) to Part 6.7 of Division 3 of Title 2 of, the Government Code, and to add

Section 19559 to the Revenue and Taxation Code, relating to state tourism.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 15364.51 of the Government Code is amended to read:

15364.51. It is the intention of the Legislature in enacting this part or amending this part to add Chapter 2.2 (commencing with Section 15372.60) to do all of the following:

(a) Reaffirm a commitment to the fostering of the economic activity inherent in tourism promotion as delineated as a mandate to the agency and to the Office of Tourism.

(b) To provide for an effective means of promoting and marketing the State of California as a destination for tourists on a worldwide basis, to provide the private sector with a more effective means of promoting tourism efforts and a forum for removing obstacles to overall tourism growth in order for California to remain competitive in the world tourism marketplace.

(c) Optimize the contribution of the tourism-related industries to the state's economic prosperity and to expand employment opportunities.

(d) Make the opportunity for, and benefits of, tourism in the state accessible to its residents and visitors and ensure that present and future generations are afforded adequate tourism resources and attractions.

(e) Encourage the preservation and use of California historic and scenic environments to enhance the state's appeal as a destination for domestic and international tourism.

(f) Encourage California residents to take maximum advantage of travel and tourism opportunities within the State of California by enabling them to obtain accurate, timely, up-to-date travel and tourism information benefiting both urban and rural travelers in various regions of the state.

(g) Contribute to personal growth, health, education, and intercultural appreciation of the geography, history, arts, and ethnicity of the State of California.

(h) Encourage the free and welcome entry of individuals traveling to the state in order to enhance international understanding and goodwill, consistent with immigration laws, the laws protecting the public health, and laws governing the importation of goods into the United States and state law.

(i) Encourage investment in new tourism facilities and renovation of older facilities.

(j) Assist in the collection, analysis, and timely dissemination of data that accurately measure the economic and social impact of tourism to, and within, the state in order to facilitate planning in the public and private sectors.

(k) Harmonize, to the maximum extent possible, all state activities in support of tourism and recreation with the needs of the general public, local governments, and the private sector, and to give leadership to all concerned with tourism in California.

SEC. 2. Section 15364.52 of the Government Code is amended to read:

15364.52. (a) There is hereby created in state government a California Tourism Commission, located within the Trade and Commerce Agency, which shall consist of the Secretary of Trade and Commerce who shall serve as the chairperson of the commission; the Director of the Office of Tourism, who shall serve as vice chairperson of the commission and nine other members appointed as follows:

(1) Five members shall be appointed by the Governor who are able persons, professionally active in the tourism industry representing diverse segments of that industry.

(2) One Member of the Senate shall be appointed by the Senate Committee on Rules and one Member of the Assembly shall be appointed by the Speaker of the Assembly. These members shall be ex officio, nonvoting members of the commission.

(3) Two members, who are able persons professionally active in the tourism industry representing diverse segments of that industry, shall be appointed one each by the Senate Committee on Rules and the Speaker of the Assembly.

(b) The Assistant Director of the Office of Tourism shall serve as secretary to the commission, a nonvoting position, and shall keep the minutes and records of all commission meetings and provide staff and whatever supportive services necessary to the activities of the commission.

(c) The commission shall meet quarterly and at other times and places as the chairperson may designate for the purpose of transacting the commission's business. Each commission member shall serve without compensation but shall be reimbursed for traveling and other expenses necessarily incurred in the performance of duties.

(d) The commission shall, in cooperation with the Office of Tourism and the agency, adopt, and annually update, a tourism marketing plan for the State of California that includes both domestic and international tourism promotion. The plan shall, to the extent practical and feasible, do all of the following:

(1) Serve as a guide for effectuating the California Tourism Policy Act, within available resources.

(2) Include an assessment of the activities and accomplishments of the Office of Tourism.

(3) Outline the intended program of tourism promotion and visitor service activities for the oncoming year.

(4) Delineate the ways, means, and programs by which tourism shall be promoted, including any cost-effective marketing methods and techniques to be employed.

(5) Identify resources as are reasonably necessary, from all sources both public and private, to accomplish these promotion and marketing activities.

(6) Identify and articulate cooperative or shared cost programs, or opportunities for these ventures, with private entities.

(7) Identify licensing opportunities, including licensing agents.

(8) Contain other information, data, or recommendations that may be germane to the marketing efforts of California pursuant to the intent of this chapter.

(e) The commission, in cooperation with the Office of Tourism, may convene committees consisting of qualified professionals and experts in various segments of the tourism industry that may be required to aid in the preparation of, or revision of, the marketing plan, or parts thereof, and as may from time to time be appropriate to further the purposes of this chapter.

(f) The commission shall work to the maximum extent practicable with those private associations, nonprofit corporations, organizations, or other private entities whose purpose includes the promotion of California tourism.

(g) Members of the California Tourism Commission and the staff of the Office of Tourism, when traveling to foreign countries or attending international travel trade shows, shall do so in cooperation with the California State World Trade Commission to preserve its ambassadorial function.

(h) The commission established by this chapter shall be inoperative while the California Tourism Marketing Commission established pursuant to Chapter 2.2 (commencing with Section 15372.60) is in existence. The commission established by this chapter shall resume operation on the date the California Tourism Marketing Commission established by Chapter 2.2 (commencing with Section 15372.60) terminates.

SEC. 3. Section 15364.53 of the Government Code is amended to read:

15364.53. In addition to those functions of the Office of Tourism specified in Section 15334, the Office of Tourism and the California Tourism Marketing Commission established pursuant to Chapter 2.2 (commencing with Section 15372.60):

(a) Shall take advantage of particular promotional opportunities as may be presented.

(b) Shall facilitate travel and visitorship to, and within, California to the maximum extent feasible.

(c) May identify and assist in the development of a user-directed, computer-based, public-access information system serving the needs

of the traveling and tourist public in urban and rural areas in California.

(d) Shall develop and publish research to determine sources and characteristics of present and future visitors to California and measure the effectiveness of marketing and service programs.

(e) Shall represent the state at domestic and international travel trade shows that provide an opportunity to promote a significant amount of travel to, and within, California.

(f) Shall cooperate with the federal government in the development and the promotion of the United States as a destination for international tourism.

(g) Shall implement the Tourism Marketing Plan.

SEC. 4. Section 15364.54 of the Government Code is amended to read:

15364.54. The director shall report on or before March 1 of each year to the Governor, the Legislature, and the California Tourism Commission. Each report shall do all of the following:

(a) Detail the tourism marketing plan which has been adopted for the upcoming fiscal year. If the California Tourism Commission established pursuant to Section 15364.52 is inoperative, the secretary shall detail the marketing plan described in Section 15372.75.

(b) Assess the overall benefits and effectiveness of the tourism marketing and advertising program.

(c) Include documentation of the directly attributable benefits of the marketing program to all of the following:

(1) California's tourism industry.

(2) Employment in California.

(3) State and local tax revenues.

(4) The state's lesser known and underutilized destinations.

(d) Identify additional data that needs to be collected to assess further and adequately the benefits of the program.

(e) Establish standardized and accurate methods to measure annually California's share of the domestic and international tourism markets and assess the impact of the marketing program in terms of California's changing market share.

SEC. 5. Chapter 2.2 (commencing with Section 15372.60) is added to Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 2.2. CALIFORNIA TOURISM MARKETING ACT

Article 1. Legislative Intent

15372.60. This chapter shall be known and may be cited as the California Tourism Marketing Act.

15372.61. The Legislature hereby finds and declares all of the following:

(a) Tourism is among California's biggest industries, annually contributing over fifty-four billion dollars ($54,000,000,000) to the state economy, and employing about 700,000 Californians in 1995.

(b) In order to retain and expand the tourism industry in California, it is necessary to market travel to and within California.

(c) State funding, while an important component of marketing, has been unable to generate sufficient funds to meet the threshold levels of funding necessary to reverse recent losses of California's tourism market share.

(d) An industry-approved assessment provides a private-sector financing mechanism that, in partnership with state funding, will provide the amount of marketing necessary to increase tourism expenditures within California.

(e) The goal of the assessments is to assess the least amount per business, in the least intrusive manner, spread across the greatest practical number of tourism industry segments.

(f) The commission shall target an amount determined to be sufficient to market effectively California's tourism to and within the state.

(g) In the course of developing its written marketing plan pursuant to Section 15372.5, the commission shall, to the maximum extent feasible, do both of the following:

(1) Seek advice and recommendations from all segments of California's travel and tourism industry and from all geographic regions of the state.

(2) Harmonize, as appropriate, its marketing plan with the travel and tourism marketing activities and objectives of the various industry segments and geographic regions.

(h) The commission's marketing budget shall be spent predominantly to bring travelers and tourists into the state, and no more than 15 percent of the commission's assessed funds in any year shall be spent to promote travel within California, unless approved by at least two-thirds of the commissioners.

Article 2. Definitions

15372.65. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "Appointed Commissioner" means a commissioner appointed by the Governor.

(b) "Assessed business" means a person required to pay an assessment pursuant to this chapter, and until the first assessment is levied, any person authorized to vote for the initial referendum.

(c) "Commission" means the California Tourism Marketing Commission.

(d) "Elected Commissioner" means a commissioner elected pursuant to subdivision (d) of Section 15372.70.

(e) "Industry category" means the following classifications within the tourism industry:

(1) Accommodations.

(2) Restaurants and retail.

(3) Attractions and recreation.

(4) Transportation and travel services.

(f) "Industry segment" means a portion of an industry category. For example, rental cars are an industry segment of the transportation and travel services industry category.

(g) "Office" means the Office of Tourism within the Trade and Commerce Agency.

(h) "Person" means an individual, public entity, firm, corporation, association, or any other business unit.

(i) "Referendum" means any vote by mailed ballot of measures recommended by the commission and approved by the secretary pursuant to Section 15372.100, except for the initial referendum, which shall consist of measures contained in the selection committee report, discussed in Section 15372.66.

(j) "Secretary" means the Secretary of Trade and Commerce.

(k) "Selection Committee" means the Tourism Selection Committee described in Article 3 (commencing with Section 15372.66).

Article 3. Tourism Selection Committee

15372.66. (a) The Governor shall appoint a Tourism Selection Committee based upon recommendations from established industry associations. The committee shall consist of 25 representatives, with no fewer than six from each industry category. In selecting the representatives, the Governor shall, to the extent possible, give recognition to the diversity within each industry category. The committee shall select a chairperson from among its members. The office shall provide staffing for the committee.

(b) The selection committee shall convene on or before March 1, 1996. Not later than 150 days following the initial convening of the committee, the committee shall issue a report listing the following:

(1) Industry segments that will be included in the initial referendum.

(2) Percentage of funds to be levied against each industry category and segment. To the extent possible, the percentages shall be based upon quantifiable industry data. Funds to be levied against businesses shall bear an appropriate relationship to the benefit derived from travel and tourism by those businesses.

(3) Assessment methodology and rate of assessment within each industry segment, that may include, but is not limited to, a percentage of gross revenue or a per transaction charge.

(4) Businesses, if any, within a segment to be assessed at a reduced rate, which may be set at zero, whether temporarily or permanently, because they do not sufficiently benefit from travel and tourism.

(5) Initial slate of proposed elected commissioners. The number of commissioners elected from each industry category shall be determined by the weighted percentage of assessments from that category.

(c) Nothing in this section shall preclude the selection committee from setting the assessment rate for a business within a segment at a lower rate, which may be set at zero, than a rate applicable to other businesses within that segment if the selection committee makes specific findings that the lower rate should apply due to unique geographical, financial, or other circumstances affecting the business. No business for which a zero assessment rate is set pursuant to this subdivision shall be sent a ballot or entitled to participate in the initial referendum, or in any subsequent referendum in which its rate of assessment is set at zero.

(d) The committee members for each industry category, also referred to as a subcommittee, shall prepare a recommendation for the entire committee on how the items specified in subdivision (b) should be determined for the industry segments within their industry category. The recommendations shall not include a discussion of industry category levies, which shall be determined solely by the committee. In the event that the subcommittee cannot agree on one or more of the items specified in subdivision (b), no recommendation shall be given in that category. The recommendations shall be presented to the full committee, which shall address each of the items contained in subdivision (b).

(e) In order to be assessed, an industry segment must be defined with sufficient clarity to allow for the cost effective identification of assessed businesses within that segment.

(f) It shall be the responsibility of the office to advertise widely the selection committee process and to schedule public meetings for potential assessed businesses to provide input to the selection committee.

(g) The selection committee process and report are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

Article 4. Commission

15372.70. (a) Upon approval of the initial referendum, the office shall establish a nonprofit corporation named the California Tourism Marketing Commission. The commission shall be under the direction of a board of commissioners, which shall function as the board of directors for purposes of the Nonprofit Corporation Law.

(b) The board of commissioners shall consist of 37 commissioners comprising the following:

(1) The secretary, who shall serve as chairperson.

(2) Twelve members, who are professionally active in the tourism industry, representing each of the 12 officially designated tourism regions and diverse elements of the industry, shall be appointed by the Governor. Appointed commissioners are not limited to assessed businesses.

(3) Twenty-four elected commissioners, including at least one representative of a travel agency or tour operator that is an assessed business.

(c) The commission established pursuant to Section 15364.52 shall be inoperative so long as the commission established pursuant to this section is in existence.

(d) Elected commissioners shall be elected by industry category in a referendum. Regardless of the number of ballots received for a referendum, the nominee for each commissioner slot with the most weighted votes from assessed businesses within that industry category shall be elected commissioner. In the event that an elected commissioner resigns, dies, or is removed from office during his or her term, the commission shall appoint a replacement from the same industry category that the commissioner in question represented, and that commissioner shall fill the remaining term of the commissioner in question. The number of commissioners elected from each industry category shall be determined by the weighted percentage of assessments from that category.

(e) The secretary may remove any elected commissioner following a hearing at which the commissioner is found guilty of abuse of office or moral turpitude.

(f) With the exception of the secretary, no commissioner shall serve for more than two consecutive terms.

(g) Except for the original commissioners, all commissioners shall serve four-year terms. One-half of the commissioners originally appointed or elected shall serve a two-year term, while the remainder shall serve a four-year term. Every two years thereafter, one-half of the commissioners shall be appointed or elected by referendum.

(h) The selection committee shall determine the initial slate of candidates for elected commissioners. Thereafter the commissioners, by adopted resolution, shall nominate a slate of candidates, and shall include any additional candidates complying with the procedure described in Section 15372.102.

(i) The commissioners shall elect a vice chairperson from the elected commissioners.

(j) The commission may lease space from the office.

(k) The commission and the office shall be the official state representatives of California tourism.

(*l*) All commission meetings shall be held in California.

(m) No person shall receive compensation for serving as a commissioner, but each commissioner shall receive reimbursement

for reasonable expenses incurred while on authorized commission business.

(n) Assessed businesses shall vote only for commissioners representing their industry category.

(o) Commissioners shall comply with the reporting requirements of the Fair Political Practices Commission.

(p) Commission meetings shall be subject to the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1).

15372.71. The purpose of the commission is to increase the number of persons traveling to and within California.

15372.72. (a) The commission is a private nonprofit corporation, and not part of state government. Except as provided in Section 15372.73, the staff of the commission shall not be state employees, and the procedures adopted by the commission shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1), nor shall the commission in any other manner be construed to be a public entity.

(b) Not later than six months following the initial referendum, the commission shall adopt procedures concerning the operation of the commission in order to provide due process rights for assessed businesses.

(c) In the event that the commission fails to adopt the procedures described in subdivision (b) within the specified timeframe, the secretary shall adopt procedures for use by the commission until the commission adopts its own procedures. These procedures shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1), whether adopted by the commission or secretary.

15372.73. (a) The commission shall be administered by an executive director. That individual shall be a tourism industry marketing professional, recommended by a vote of the commissioners and approved by the Governor. The executive director shall serve at the pleasure of both the commissioners and the Governor.

(b) The executive director shall report to and receive overall guidance from the commission, and shall implement the commission's tourism marketing plan. The executive director shall report to the secretary for day-to-day managerial and financial responsibilities.

(c) The executive director shall simultaneously serve as the director of the office, and that individual shall be an exempt employee, employed by the state. So long as the commission is in existence, the only director of the office shall be the executive director of the commission. Notwithstanding any other provision of law, the executive director may supervise both employees of the commission and employees of the office, notwithstanding the fact that the commission employees are not employed by the state.

(d) The salary and benefits of the executive director shall be determined by the commission, and approved by the secretary, based upon industry standards for a director of a marketing budget of similar size. The entire salary and all benefits of the executive director shall be paid from assessments.

15372.74. (a) The commission shall annually provide to all assessed businesses a report on the activities and budget of the commission including, but not limited to, income and expenses, the fund balance, a summary of the tourism marketing plan, and a report of progress in achieving the goals set forth in the plan.

(b) The commission shall maintain a report on the percentage assessment allocation between industry categories and industry segments. The report shall also specify the reasons and methodology used for the allocations. This report shall be updated every time the assessment allocations are amended. The report shall be made available to any assessed business.

15372.75. (a) The commission shall annually prepare, or cause to be prepared, a written marketing plan. In developing the plan, the commission shall utilize, as appropriate, the advice and recommendations of the industry marketing advisory committee or committees established pursuant to subdivision (a) of Section 15372.77. The commission may amend the plan at any commission meeting. All expenditures by the commission shall be consistent with the marketing plan.

(b) The plan shall promote travel to and within California, and shall include, but not be limited to, the following:

(1) An evaluation of the previous year's budget and activities.

(2) Review of California tourism trends, conditions, and opportunities.

(3) Target audiences for tourism marketing expenditures.

(4) Marketing strategies, objectives, and targets.

(5) Budget for the current year.

(c) Before final adoption of the plan, the commission shall provide each known destination marketing organization in California notice of the availability of the proposed marketing plan and suitable opportunity, which may include public meetings, to review the plan and to comment upon it. The commission shall take into consideration any recommendations submitted by the destination marketing organizations, except that the final determination as to the nature, extent, and substance of the plan shall in all respects rest solely within the ultimate discretion of the commission.

15372.76. Commissioners and employees of the commission are not responsible individually in any way whatsoever to any person for liability for any good faith activity of the commission.

15372.77. (a) The commission shall establish one or more industry marketing advisory committees, which may include noncommissioners as members. The industry marketing advisory committees shall be structured so that, in the aggregate, they include,

to the maximum extent feasible and reasonable, representation from every geographic region of the state and every segment of the state's travel and tourism industry. The commission shall establish procedures for the operation of the industry marketing advisory committees that will provide appropriate opportunity for every geographic region of the state and every segment of the travel and tourism industry to offer advice and recommendations to the commission relative to the development of its written marketing plan pursuant to Section 15372.75.

(b) The commission may also establish from time to time any other committees it deems appropriate, and may appoint noncommissioners to the committees.

15372.78. If the commission believes that the administration of the marketing plan will be promoted thereby, the commission may borrow money, with or without interest, to carry out the provisions of the marketing plan, and may hypothecate anticipated assessment collections.

Article 5. Secretary

15372.85. (a) The marketing of California tourism is hereby declared to be affected with the public interest. This chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(b) The police powers shall be used to collect assessments not paid by the deadlines established by the secretary.

15372.86. (a) The following powers shall be the responsibility of the secretary:

(1) Call referenda in accordance with the procedures set forth in Article 6 (commencing with Section 15372.100) and certify the results.

(2) Collect and deposit assessments.

(3) Exercise police powers.

(4) Pursue actions and penalties connected with assessments.

(b) Except as otherwise specified in this chapter, the secretary shall have veto power over the actions of the commission, following consultation with the commission, only under the following circumstances:

(1) Travel and expense costs.

(2) Situations where the secretary determines a conflict of interest exists, as defined by the Fair Political Practices Commission.

(3) The use of any state funds.

(4) Any contracts entered into between the commission and a commissioner.

15372.87. (a) Except as otherwise specified in Section 15372.111, the commission may be terminated at any time after the initial four years of operation by referendum of the assessed businesses.

(b) Notice of the termination shall be mailed to all assessed businesses.

(c) Upon termination, the commission shall continue its existence as a nonprofit corporation for purposes of winding up its affairs and dissolution.

(d) Upon termination of the commission established pursuant to this chapter, the California Tourism Commission authorized pursuant to Section 15364.52 shall advise the office, and conduct all other tasks authorized by the California Tourism Policy Act.

15372.88. The secretary may require any and all assessed businesses to maintain books and records that reflect their income or sales as reflected in the assessment, and to furnish the secretary with any information that may, from time-to-time, be requested by the secretary, and to permit the inspection by the secretary of portions of books and records that relate to the amount of assessment.

15372.89. Information pertaining to assessed businesses obtained by the secretary pursuant to this chapter is confidential and shall not be disclosed except to a person with the right to obtain the information, any attorney hired by the secretary who is employed to give legal advice upon it, or by court order. Information obtained by the secretary in order to determine the assessment level for an assessed business is exempt from the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

15372.90. For the purpose of carrying out Section 15372.86, the secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents of any kind.

15372.91. A person shall not be excused from attending and testifying, or from producing documentary evidence, before the secretary in obedience to the subpoena of the secretary pursuant to the authority granted in Section 15372.90 on the ground, or for the reason, that the testimony or evidence, documentary or otherwise, which is required of him or her may tend to incriminate the person or subject that person to a penalty. A natural person shall not, however, be prosecuted or subjected to any penalty on account of any transaction, matter, or thing concerning which he or she may be required to testify, or produce evidence, documentary or otherwise, before the secretary in obedience to a subpoena. A natural person testifying shall not, however, be exempt from prosecution and punishment for perjury committed in so testifying.

15372.92. Any funds appropriated to the office may be used to implement the tourism marketing plan specified in Section 15372.75 or, if the commission is not in existence, Section 15364.52. In addition to any other authority for the office to spend funds, state funds may be used for the following: research, conducting and advertising referenda, administration of state funds, policing, collection of

assessments, and contracting for assistance in obtaining information on businesses to be assessed.

15372.93. The office may contract with the commission in order for the commission to undertake marketing activities utilizing state funds, and Section 10295, and Article 4 (commencing with Section 10335) and Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code shall not apply to those agreements.

Article 6. Referendum

15372.100. (a) A referendum shall be called every two years, commencing on the second anniversary of the initial referendum.

(b) The first referendum following the initial referendum shall solely determine the new set of commissioners by adopted resolution. At that referendum, the assessment target shall be twenty-five million dollars ($25,000,000). The assessment formula shall remain the same and the commission shall continue its existence. As used in this article and Article 7 (commencing with Section 15372.105) "assessment level" means the estimated gross dollar amount received by assessment from all assessed businesses on an annual basis, and "assessment formula" means the allocation method used within each industry segment (for example, percentage of gross revenue).

(c) Commencing with the third referendum, the commission shall, by adopted resolution, determine the slate of individuals who will run for commissioner. The resolution may also include: the proposed assessment levels, assessment formulae, and whether the commission shall continue in existence. The commission may specify in the resolution that a special, lower assessment rate that was set pursuant to subdivision (c) of Section 15372.66 for a particular business will no longer apply due to changes in the unique circumstance that originally justified the lower rate. The resolution may include up to three possible assessment levels, from which the assessed businesses will select one assessment level by plurality weighted vote.

(d) The commission shall deliver to the secretary the resolution described in subdivision (b) or (c). The secretary shall call a referendum containing the information required by subdivision (b) or (c) plus any additional matters complying with the procedures of subdivision (b) of Section 15372.102.

(e) When the secretary calls a referendum, all assessed businesses shall be sent a ballot for the referendum. Every ballot that the secretary receives by the ballot deadline shall be counted, utilizing the weighted formula adopted initially by the selection committee, and subsequently amended by referendum.

(f) If the referendum includes more than one possible assessment rate, the rate with the plurality of weighted votes shall be adopted.

(g) The initial referendum shall, if possible, be held within 180 days of receipt by the Governor of the selection committee report. The secretary shall call the referendum.

(h) Referenda can cover one or more of the following subjects:

(1) Assessment level, based upon specified assessment formulae.

(2) Amended industry segment allocation formula.

(3) Percentage allocation of assessments between industry categories and segments.

(4) Election of commissioners.

(5) Termination of the commission.

(6) For the initial referendum, whether to have an assessment.

15372.101. (a) The costs of marketing and promoting the initial referendum shall be provided by private payments. The office shall coordinate the marketing and promotion. The costs of the initial referendum shall be paid by the office. The office shall coordinate the referendum to ensure that it is unbiased and factually correct. In the event that the initial referendum fails in the first attempt at passage, subsequent attempts at passage of the initial referendum shall be permitted, except that the costs of conducting the subsequent attempts at passage, along with the costs of marketing and promoting those attempts at passage, shall be provided by private payments. Subsequent attempts at passage shall be conducted in the manner specified in this subdivision. In the event that the initial referendum passes, whether on the first attempt at passage or a subsequent attempt at passage, the private payers and the office shall be reimbursed for all of their respective initial referendum costs from assessments first received.

(b) The ongoing referendum costs shall be paid by the commission.

15372.102. (a) Commencing with the third referendum, assessed businesses may place on a referendum additional candidates for commissioner, a different assessment level, or both.

(b) Except for the referendum that occurs four years from the initial referendum, a minimum of 20 percent of the assessed businesses (calculated by weighted percentages) must signify their agreement to add different assessment levels to the items included in the referendum. For the referendum occurring four years from the initial referendum, a minimum of 10 percent of the assessed businesses (calculated by weighted percentages) must signify agreement.

(c) A minimum of 10 percent of the assessed businesses (calculated by weighted percentages) must signify their agreement to add candidates for commissioner to the items included in the referendum.

15372.103. (a) Upon receipt of the resolution required by Section 15372.100, including any assessed business referendum request pursuant to Section 15372.102, the secretary shall establish a referendum period not to exceed 60 days. If the secretary determines

that the referendum period so established does not provide sufficient time for the balloting, the secretary may extend the referendum period not more than 15 additional days. At the close of the referendum period, the secretary shall count and tabulate the ballots filed during the referendum period.

(b) The secretary shall establish a deadline for adoption of the resolution described in subdivision (a). If the commission fails to meet this deadline, or if the adopted resolution fails to meet the requirements of this chapter, then assessed businesses may present a slate of candidates to the secretary not later than 60 days following the deadline established for the commission resolution. A minimum of 10 percent of weighted voters must sign the document presenting the slate.

(c) In the event that the secretary does not receive a resolution required by Section 15372.100 from the commission by the deadline established pursuant to subdivision (b) or the resolution does not comply with the requirements of this chapter and the assessed businesses fail to present a slate pursuant to subdivision (b), then the secretary shall select a slate of commissioners and this slate, added to any assessed business referendum requests pursuant to Section 15372.102, shall constitute the items included in the referendum.

15372.104. (a) Each assessed business is entitled to a weighted vote in each referendum. In calculating weighted votes, each assessed business receives a vote equal to the relative assessment paid by that business. An assessed business paying nine hundred dollars ($900) in annual assessments has three times the weighted vote of a business paying three hundred dollars ($300). Weighted votes are used to determine all issues on the referendum. The initial referendum, and any referendum item to terminate the commission, must be approved by a majority of the weighted votes cast at the referendum. The amount of assessment and selection of commissioners is determined by the most weighted votes, whether or not there is a majority.

(b) Each assessed business is part of one industry category and one industry segment. A business with revenue in more than one industry category or industry segment shall be included in the category and segment in which it earns the most gross revenue.

(c) Each assessed business is eligible to vote for each item on the referendum, except that an assessed business can only vote for commissioners representing its industry category, and industry segment formulae for its industry segment.

(d) A business is not eligible to vote unless it has paid all assessments and fines outstanding as of a date established by the secretary.

Article 7. Assessments

15372.105. (a) Each industry category shall establish a committee to determine the following within its industry category: industry segments, assessment formula for each industry segment, and any types of business exempt from assessment. The initial segment committees shall consist of the subcommittee for that category as described in subdivision (c) of Section 15372.66. Following approval of the assessment by referendum, the committees shall be selected by the commission, based upon recommendations from the tourism industry. Committee members need not be commission members.

(b) The committee recommendations shall be presented to the commission or selection committee, as applicable. The selection committee may adopt a resolution specifying some or all of the items listed in subdivision (a), plus an allocation of the overall assessment among industry categories. The commission may adopt a resolution specifying one or more of the items listed in subdivision (a), plus an allocation of the proposed assessment. The selection committee and commission are not required to adopt the findings of any committee.

(c) The initial industry category and industry segment allocations shall be included in the selection committee report required by subdivision (b) of Section 15372.66. Changes to the industry segment allocation formula may be recommended to the commission by a segment committee at the biennial commission meeting scheduled to approve the referendum resolution pursuant to Section 15372.100. At the same meeting, the commission may amend the percentage allocations among industry categories. Any item discussed in this section that is approved by resolution of the commission, except amendments to the percentage allocations among industry categories, shall be placed on the next referendum, and adopted if approved by the weighted majority of votes cast.

(d) Upon approval by referendum, the office shall calculate the assessments due by each assessed business, and mail an assessment bill to each assessed business. The secretary shall determine how often assessments are collected, based upon available staffing resources. The secretary may stagger the assessment collection throughout the year, and charge businesses a prorated amount of assessment because of the staggered assessment period. The secretary and office shall not divulge the amount of assessment or weighted votes of any assessed businesses, except as part of an assessment action.

(e) An assessed business may appeal an assessment to the secretary based upon the fact that the business does not meet the definition established for an assessed business within its industry segment or that the level of assessment is incorrect. If the error is based upon failure of the business to provide the required

information in a timely manner, the secretary may fine the business as a condition of correcting the assessment.

(f) Notwithstanding any other provision of law, an assessed business may pass on some or all of the assessment to customers. An assessed business that is passing on the assessment may, but shall not be required to, separately identify or itemize the assessment on any document provided to a customer. Assessments levied pursuant to this chapter are not part of gross receipts or gross revenue for any purpose, including the calculation of sales or use tax and income pursuant to any lease; however, assessments that are passed on to customers shall be included in gross receipts for purposes of income and franchise taxes.

15372.106. If approved by referendum, the initial assessment level shall be approximately twenty-five million dollars ($25,000,000). This figure is a target, and shall serve as the basis for setting assessment formulae, but the actual amount of collected assessments may be more or less than the assessment level.

15372.107. Assessments may be used in furtherance of the purposes set forth in Section 15372.71, or to fund the costs pursuant to Section 15372.92. Assessments may be used to fund these costs regardless of whether the work was performed by the office or commission.

15372.108. Notwithstanding any other provision of law, the secretary may utilize any and all records held by the state in order to establish and maintain an accurate list of businesses to be assessed, including information necessary to determine the amount of assessment owed by a business.

15372.109. (a) The secretary shall establish a list of businesses to be assessed and the amount of assessment owed by each. The secretary shall collect the assessment from all assessed businesses, and in collecting the assessment the secretary may exercise the police powers and bring enforcement actions.

(b) Funds collected by the secretary shall be deposited into the account of the commission. This account shall not be an account of the state government.

(c) Any costs relating to the collection of assessments incurred by the state shall be reimbursed by the commission.

15372.110. (a) The office shall develop a list of California businesses within each segment included within the report required by subdivision (b) of Section 15372.66, periodically updated. Other state agencies shall assist the office in obtaining the names and addresses of these businesses.

(b) The office shall mail to each business identified pursuant to subdivision (a) a form requesting information necessary to determine the assessment for that business. Any business failing to provide this information in a timely manner shall be assessed an amount determined by the secretary to represent the upper assessment level for that segment.

(c) Subject to approval by the commission, the office shall establish by regulation the procedure for assessment collection.

15372.111. (a) Funding for the commission is a cooperative venture. It is the intent of the Legislature that the state shall be responsible for appropriating a minimum of seven million three hundred thousand dollars ($7,300,000) each fiscal year to tourism, and the industry shall be responsible for targeting the level of assessments for each fiscal year at twenty-five million dollars ($25,000,000) or more pursuant to Section 15372.106. The industry may terminate the commission by referendum at any time, including during the initial four years, if the state fails to appropriate seven million three hundred thousand dollars ($7,300,000) in any fiscal year, and the state may decide not to appropriate funding in the event that the commission fails to target its annual assessment level at or above the level set for the initial referendum in any fiscal year. Termination of the commission by the industry shall require an adopted resolution of the commission to either include this issue in a regularly scheduled referendum, or to call a special referendum to decide the issue.

(b) The assessed funds shall be audited annually.

(c) The assessed funds shall be under the control of the commission, which shall spend the funds consistent with commission policies and the tourism marketing plan. The state shall have no interest in the fund except the general state interest that the state has in nonprofit corporations.

15372.112. Any assessment levied as provided in this chapter is a personal debt of every person so assessed and shall be due and payable to the secretary. If any assessed person fails to pay any assessment, the secretary may file a complaint against the person in a state court of competent jurisdiction for the collection of the assessment.

15372.113. If any assessed business that is duly assessed pursuant to this chapter fails to pay to the secretary the assessed amount by the due date, the secretary may add to the unpaid assessment an amount not to exceed 10 percent of the unpaid assessment to defray the cost of enforcing the collection of the unpaid assessment. In addition to payment for the cost of enforcing a collection, the assessed business shall pay to the secretary a penalty equivalent to the lesser of either the maximum amount authorized by Section 1 of Article XV of the California Constitution or 5 percent for each 30 days the assessment is unpaid, prorated over the days unpaid, commencing 30 days after the notice has been given to the assessed business of his or her failure to pay the assessment on the date required, unless the secretary determines, to his or her satisfaction, that the failure to pay is due to reasonable cause beyond the control of the assessed business.

15372.114. The secretary may require assessed businesses to deposit with him or her in advance the following amounts:

(a) An amount for necessary expenses.

(b) An amount that shall not exceed 25 percent of the assessment to cover costs that are incurred prior to the receipt of sufficient funds from the assessment.

(c) The amount of any deposit that is required by the secretary shall be based upon the estimated assessment for the assessed business.

15372.115. In lieu of requiring advance deposits pursuant to Section 15372.114, or in order generally to provide funds for defraying administrative expenses or the expenses of implementing the tourism marketing plan until the time that sufficient moneys are collected for this purpose from the payment of the assessments that are established pursuant to this chapter, the secretary may receive and disburse for the express purposes contributions that are made by assessed businesses. If, however, collections from the payment of established assessments are sufficient to so warrant, the secretary shall authorize the repayment of contributions, or authorize the application of the contributions to the assessment obligations of persons that made the contributions.

15372.116. Upon termination of the commission, any remaining funds that are not required by the secretary to defray commission expenses shall be returned by the secretary upon a pro rata basis, to all persons from whom the assessments were collected unless the secretary finds that the amounts to be returned are so small as to make impractical the computation and remitting of the pro rata refund to the appropriate persons. If the secretary makes a finding that returning the remaining funds would be impractical, he or she may use the moneys in the fund to defray the costs of the office.

15372.117. Any check or warrant that is drawn against the funds of the commission that remains unclaimed or uncashed for a period of six months from the date of issuance shall be canceled and the money retained for disbursement to the original payee or claimant upon satisfactory identification for a period of one year from the time the check or warrant is canceled. The money so retained, if not claimed within the period of one year, shall be used for administration of the commission, and in furtherance of the tourism marketing plan.

15372.118. A business is exempt from the assessments provided for in this chapter if the business is a travel agency or tour operator that derives less than 20 percent of its gross revenue from travel and tourism occurring within the state. A travel agency or tour operator that qualifies for this exemption may pay the assessment by filing a written request with the secretary indicating its desire to be categorized as an assessed business.

Article 8. Actions and Penalties

15372.120. Any action for any penalty or other remedy that is prescribed under any provision of this chapter shall be commenced within three years from the date of the alleged violation.

15372.121. Every person who provides false information concerning an assessment or pursuant to Section 15372.124 is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) or by imprisonment of not less than 10 days nor more than six months, or by both the fine and imprisonment.

15372.122. Any person who files false information concerning an assessment is civilly liable in an amount of not more than ten thousand dollars ($10,000), in addition to any amount owed as the assessment.

15372.123. (a) When the secretary makes a determination that an assessment is deficient as to the payment due, the secretary may determine the amount of the deficiency, including any applicable penalty, as provided in this chapter. After giving notice that a deficiency determination is proposed and an opportunity to file a report or provide supplemental information is provided, the secretary may make one or more deficiency determinations of the amount due for any reporting period based on information in the secretary's possession. When an assessed business is discontinued, a deficiency determination may be made at anytime thereafter as to the liability arising out of the operation of that business.

(b) The secretary shall give notice of the proposed deficiency determination and the notice of deficiency determination by mailing a copy of the deficiency to the assessed business at the current address for that business on file with the secretary. The giving of notice is complete at the time of deposit in the United States mail. In lieu of mailing, a notice may be served personally by delivering it to the person to be served.

(c) Except in the case of fraud or failure to file required information, a notice of a deficiency determination shall be given within four years of the accrual of the deficiency.

(d) The person against whom a deficiency determination is made may petition the secretary for redetermination within 30 days after the serving of the notice of deficiency determination. If a petition is not filed within 30 days, the deficiency determination shall become final.

(e) A petition for redetermination shall be in writing, state the specific grounds upon which it is based, and be supported by applicable records and declarations under penalty of perjury that the information supporting the petition is accurate and complete. If a petition for redetermination is duly filed, the secretary shall reconsider the deficiency determination and may grant a hearing thereon. The secretary shall, as soon as practicable, make an order on

redetermination, which shall become final 30 days after service of notice of the order of redetermination upon the petitioner. The notice of the order shall be served in the same manner as the notice of the original deficiency determination.

(f) If any amount required to be paid pursuant to a deficiency determination or redetermination is not paid within the time specified in the notice thereof, the secretary may, within four years thereafter, file in the Superior Court in the County of Sacramento, or the superior court in any other county, a certificate specifying the amount required to be paid, the name and address of the person liable as it appears on the records of the secretary, and a request that judgment be entered against the person in that amount 30 days after the filing. Notice of the filing shall be given in the same manner as for the notice of deficiency determination. The court shall enter a judgment in conformance with the secretary's certificate 30 days after its filing, unless a petition for judicial review has been filed within the 30-day period.

(g) An abstract of the judgment, or a copy thereof, may be filed with the county recorder of any county. From the time of filing of the judgment, the amount of the judgment constitutes a lien upon all of the property in the county owned by the judgment debtor. The lien has the force, effect and priority of a judgment lien and shall continue for 10 years from the date of the judgment, unless sooner released or otherwise discharged. The lien imposed by this section is not valid insofar as personal property is concerned against a purchaser of value without actual knowledge of the lien.

(h) Execution shall issue upon the judgment upon request of the secretary in the same manner as execution may issue upon other judgments, and sales shall be held under execution as prescribed in the Code of Civil Procedure.

(i) The person named in a notice of deficiency determination or redetermination may, within 30 days of the notice of filing with the superior court, file an action for judicial review thereof, as provided herein, in the Superior Court in the County of Sacramento or, with the secretary's consent, the superior court in any other county. As a condition of staying entry of judgment or granting other relief, the court shall require the filing of a corporate surety bond with the secretary in the amount of the deficiency stated in the certificate. In any court proceeding, the certificate of the secretary determining the deficiency shall be prima facie evidence of the fee and the amount due and unpaid.

(j) The provisions of this section are supplemental to any other procedures for collection and imposition of fees and penalties provided by this chapter.

(k) In lieu of proceeding pursuant to this section, the secretary may file a complaint for collection of unpaid assessments as provided by law.

15372.124. It is a violation of this chapter for any person to willfully render or furnish a false or fraudulent report, statement, or record that is required by the secretary pursuant to any provision of this chapter.

15372.125. Any suit brought by the secretary to enforce any provision of this chapter, or any regulation, or rule and regulation, that is issued by the secretary shall provide that the defendant pay to the secretary the costs that were incurred by the secretary and by the commission in the prosecution of the action in the event the secretary prevails in the action. Any money that is recovered shall reimburse the account or accounts used to pay the costs.

Article 9. Miscellaneous

15372.130. In any civil or criminal action or proceeding for violation of any of the following, proof that the act that is complained of was done in compliance with the provisions of this chapter is a complete defense to the action or proceeding:

(a) The Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(b) The Unfair Practices Act, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

(c) Any rule of statutory or common law against monopolies or combinations in restraint of trade.

15372.131. If any section, sentence, clause, or part of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, that invalidity shall not affect the remaining provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. The Legislature hereby declares that it would have passed this chapter and each section, sentence, clause, and part of this chapter despite the fact that one or more sections, sentences, clauses, or parts of this chapter is declared invalid.

SEC. 6. Section 19559 is added to the Revenue and Taxation Code, to read:

19559. (a) Subject to the limitations of this section and federal law, the Franchise Tax Board may provide the Secretary of Trade and Commerce, when that person is acting in any capacity authorized by Chapter 2.2 (commencing with Section 15372.60) of Part 6.7 of Division 3 of Title 2 of the Government Code, with all of the following:

(1) The names and addresses or other identification or location information from income or franchise tax returns or other records required under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, solely for the purposes of establishing and maintaining an accurate list of

businesses to be assessed pursuant to Chapter 2.2 (commencing with Section 15372.60) of Part 6.7 of Division 3 of Title 2 of the Government Code.

(2) Sufficient financial data from income and franchise tax returns solely for purposes of verifying the base upon which the assessment is determined.

(b) Neither the Trade and Commerce Agency, nor its agents, nor any of its current or former officers or employees, nor any current or former members, employees, or agents of the California Tourism Marketing Commission, shall disclose or use any information obtained pursuant to this section except as provided in this section. Any disclosure not authorized by this section is a misdemeanor.

(c) The Franchise Tax Board may from time to time review the use of information provided to the Secretary of Trade and Commerce pursuant to this section and the Secretary of Trade and Commerce shall provide the Franchise Tax Board with access for that purpose. The reviews shall be limited to ensuring that the Secretary of Trade and Commerce uses the information provided by the Franchise Tax Board only in the manner specified in subdivision (a). The Franchise Tax Board shall report all findings to the Secretary of Trade and Commerce.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 872

An act to add and repeal Chapter 5 (commencing with Section 71035) of Part 1 of Division 34 of the Public Resources Code, relating to environmental protection.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Chapter 5 (commencing with Section 71035) is added to Part 1 of Division 34 of the Public Resources Code, to read:

CHAPTER 5. PERMIT CONSOLIDATION ZONE PILOT PROGRAM

71035. As used in this chapter:

(a) "Certified unified program agency" means a certified unified program agency as designated under Chapter 6.11 (commencing with Section 25404) of Division 20 of the Health and Safety Code.

(b) "Environmental agency" means an environmental agency as defined in subdivisions (a) to (g), inclusive, of Section 71011.

(c) "Environmental permit" means any environmental permit issued by an environmental agency or a certified unified program agency.

(d) "Facility compliance plan" means a plan that does all of the following:

(1) Contains information and data for all emissions and discharges from the facility and the management of solid waste and hazardous waste, including all information revelant to individual environmental permits that would otherwise be required for the facility.

(2) Specifies measures, including, but not limited to, monitoring, reporting, emissions limits, materials handling, and throughputs, to be taken by the project applicant to ensure compliance with all environmental permits that would otherwise be required.

(3) Meets the requirements of all individual environmental permits that would otherwise be required.

(4) Ensures compliance with all applicable environmental rules, regulations, laws, and ordinances.

71035.1. On or before January 1, 1997, the secretary shall adopt regulations establishing the permit consolidation zone pilot program consisting of all of the following:

(a) An application process whereby cities and counties may request that all or part of their jurisdiction be designated a permit consolidation zone.

(b) An administrative process which may be used for new or expanded facilities within a designated permit consolidation zone, at the option of the permit applicant, to substitute a facility compliance plan for any environmental permit. The application process shall contain a means to determine that new or expanded facilities are in compliance with all applicable laws and requirements.

(c) A process to coordinate inspection and enforcement activities among the agencies that would otherwise have issued individual permits for facilities choosing to be permitted through a facility compliance plan.

(d) Procedures pursuant to which applicant cities and counties may amend or terminate the designation.

71035.2. The regulations required by Section 71035.1 shall be developed by the secretary in coordination with the Secretary for Trade and Commerce, the Secretary of the Resources Agency, and the Secretary for Business, Transportation and Housing, and in

consultation with representatives of cities, counties, local environmental agencies, and certified unified program agencies.

71035.3. The application process required by subdivision (a) of Section 71035.1 shall provide for all of the following:

(a) A competitive application process which designates not more than 20 cities and counties with a population greater than 5,000 as determined in the 1990 census, or parts thereof, as a permit consolidation zone.

(b) The award of designations by a review panel composed of the secretary and the Secretary for Trade and Commerce.

(c) The award of designations based on the applications submitted. In awarding designations, the review panel shall consider the extent to which the applicant has instituted permit streamlining measures for permits under its authority, whether there is a single certified unified program agency within the boundaries of the area proposed in the application, whether provisions are included to ensure adequate public participation in the final permit decisions on facilities subject to a facility compliance plan, and the extent of existing or proposed agreements between the applicant and other local, state, and regional permitting agencies with jurisdiction within the boundaries of the area proposed in the application.

(d) A requirement that all cities, counties, and local environmental agencies with permit authority over the projects subject to a facility compliance plan within the proposed permit consolidation zone agree to the designation.

(e) In awarding designations, ensure a diverse range of permit consolidation zones, including, but not limited to, urban and rural counties, large and small cities, and communities encompassing military base or reservations reuse.

71035.4. (a) (1) A designated city or county may terminate its involvement in the pilot program established pursuant to this chapter following 180 days' written notice to the secretary. The permit consolidation zone shall be deemed terminated at the end of the 180-day notice period.

(2) Notwithstanding any other provision of law, any facility within the terminated permit consolidation zone permitted through a facility compliance plan pursuant to Section 71035.5 shall be deemed to hold valid environmental permits until individual environmental permits are issued or denied for the facility by the applicable environmental agencies.

(b) An application for amendment to a permit consolidation zone designation shall be submitted by the applicable city or county to the review panel under Section 71035.3. Any amendment shall become effective within 90 days after the date of receipt by the review panel.

(c) The procedure for replacing a facility compliance plan in whole or in part with individual environmental permits, as a result of an amendment or termination of a permit consolidation zone

designation, shall be specified in the applications submitted pursuant to Section 71035.3.

71035.5. The facility compliance plan substituted pursuant to subdivision (b) of Section 71035.1 shall provide for all of the following:

(a) Substitution of the plan for all individual state agency and local environmental permits that would otherwise be required for the proposed project, unless otherwise specified in the designation application submitted by the applicant city or county.

(b) Measures to be taken by the project applicant to ensure compliance with all applicable rules, regulations, ordinances, and statutes and to ensure that the facility compliance plan is as enforceable as individual permits.

(c) The equivalent opportunity for public notice, hearing, comment, participation, administrative appeal, and judicial review as provided in the environmental permit process that would otherwise be applicable.

(d) All applicable individual environmental permits for the project to be deemed to have been issued upon receipt of a complete and adequate facility compliance plan by the secretary.

(e) A filing fee to reflect the reasonable costs of all agencies that would otherwise issue individual permits for the project covered by the facility compliance plan, and that also reflects the reduced costs of the applicable agencies through reduced staff review of individual permits. Any fee shall be subject to Section 57001 of the Health and Safety Code. The project applicant shall not be liable for any application fees for any individual permit that is otherwise addressed in the facility compliance plan. Local agencies shall identify and quantify any local fees in the application submitted pursuant to Section 71035.3.

71035.6. (a) Environmental agencies with jurisdiction over portions of the compliance plan shall determine if a compliance plan is complete and adequate, in accordance with this section, as it relates to their particular area of jurisdiction.

(b) A determination of completeness and adequacy shall be based solely upon whether there is compliance with the rules, regulations, ordinances, and statutes governing the environmental agency. As part of the determination of adequacy, an environmental agency may require additional conditions necessary, in its judgment, to make the facility compliance plan consistent with its rules, regulations, ordinances, and statutes.

(c) If an environmental agency possessed discretionary authority over a facility prior to the enactment of this chapter, then the determination of completeness and adequacy shall be a discretionary action for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)). If, subsequent to the enactment of this chapter, an environmental agency, by regulation, eliminates its discretionary authority over a facility, then the determination of completeness and adequacy shall not be a

discretionary action for purposes of the California Environmental Quality Act.

(d) An environmental agency shall transmit its determination to the secretary within 45 days from the date of receipt of the facility compliance plan.

(e) (1) If an environmental agency determines that a facility compliance plan is not complete and adequate, the agency shall, within the 45-day period specified in subdivision (d), transmit that determination, in writing, to the project applicant. The agency's determination shall specify those parts of the plan that are incomplete or inadequate and shall indicate the manner in which they can be made complete and adequate, including a list and thorough description of the specific information needed to make the plan complete and adequate. The project applicant shall submit materials to the environmental agency in response to the list and description.

(2) Not later than 30 calendar days after receipt of the submitted materials, the environmental agency shall determine in writing whether they are complete and adequate and shall immediately transmit that determination to the applicant. If the written determination is not made within the 30-day period, the application together with the submitted materials shall be deemed complete and adequate for purposes of this chapter.

(3) If the plan together with the submitted materials are determined not to be complete and adequate pursuant to paragraph (2), the environmental agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. Notwithstanding a decision pursuant to paragraph (2) that the application and submitted materials are not complete and adequate, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete and adequate for the purposes of this chapter.

(4) Nothing in this section precludes an applicant and an environmental agency from mutually agreeing to an extension of any time limit provided by this section.

(f) All applicable individual environmental permits for the project shall be deemed to have been issued upon receipt of a complete and adequate facility compliance plan, as determined by the secretary, after receiving the determinations of completeness and adequacy from environmental agencies pursuant to subdivision (a). In determining completeness and adequacy, the secretary shall not substitute his or her judgment for that of the applicable environmental agencies.

71035.7. The secretary shall provide regulatory assistance with regard to projects permitted through a facility compliance plan.

71035.8. Facility compliance plans may not be applied to projects involving any of the following:

(a) The incineration of wastes.

(b) The storage, treatment, transportation, or disposal of radioactive materials.

(c) Other activities that the secretary determines, based on risks to the environment and the public health and safety, to be appropriately regulated through individual permits.

(d) Other activities within a specific permit consolidation zone as requested by the city or county in its application submitted pursuant to Section 71035.3.

71035.9. This chapter shall be implemented by the secretary only to the extent consistent with federal law and any delegation agreements with federal agencies.

71035.10. The secretary and the Secretary for Trade and Commerce shall prepare and submit an annual report to the Governor and the Legislature by January 31 of each year, containing the following:

(a) A description and location of facilities permitted through a facility compliance plan, including the number of individual environmental permits that otherwise would have been required, an estimate of cost savings to the participating facilities and the involved environmental agencies as a result of the pilot program, and the degree to which compliance with the applicable environmental laws and regulations has been maintained or increased through the pilot program.

(b) As appropriate, recommendations for modification, expansion, or elimination of the pilot program established by this chapter.

(c) Recommendations for how the pilot program could be expanded to complex facilities including, but not limited to, whether the 45-day review of facility plan completeness and adequacy should be expanded.

71035.11. This chapter shall remain in effect until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends that date.

CHAPTER 873

An act to add Section 305 to the Health and Safety Code, relating to maternal and child health.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 13, 1995.]

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

SECTION 1. Section 305 is added to the Health and Safety Code, to read:

305. (a) For purposes of this section, "prenatal care provider" means a licensed health care professional providing prenatal care within his or her lawful scope of practice. This definition shall not include a licensed health care professional who provides care other than prenatal care to a pregnant patient.

(b) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall offer human immunodeficiency virus (HIV) information and counseling to every pregnant patient. This information and counseling shall include, but shall not be limited to, all of the following:

(1) A description of the modes of HIV transmission.

(2) A discussion of risk reduction behavior modifications including methods to reduce the risk of perinatal transmission.

(3) Referral information to other HIV prevention and psychosocial services, if appropriate, including anonymous and confidential test sites approved by the Office of AIDS of the State Department of Health Services.

(c) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall offer an HIV test as defined in Section 26 to every pregnant patient, unless a positive HIV test result is already documented in the patient's medical record or the patient has AIDS as diagnosed by a physician. The offering of an HIV test shall include discussion of all of the following:

(1) The purpose of the test.

(2) The risks and benefits of the test.

(3) The voluntary nature of the test.

(d) If the pregnant woman voluntarily consents to testing, the provider shall arrange for HIV testing directly or by referral, including, but not limited to, referral to anonymous and confidential test sites approved by the Office of AIDS of the State Department of Health Services.

(e) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall document in the patient's medical record that HIV information and counseling has been offered. The prenatal care provider shall also document the offering of the HIV antibody test in the patient's medical record.

(f) Nothing in this section shall be construed to require testing, the documentation or disclosure of whether the patient had an HIV test, or the result of an HIV test except to the patient. Any documentation or disclosure of HIV related information shall be made in accordance with Chapter 1.11 (commencing with Section 199.20) of Part 1 of Division 2 regarding confidentiality and informed consent.

CHAPTER 874

An act to add and repeal Article 4.05 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9 of, and to repeal Article 4.1 (commencing with Section 14139.7) of, the Welfare and Institutions Code, relating to long-term care.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Article 4.05 (commencing with Section 14139.05) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 4.05. Long-Term Care Integration Pilot Program

14139.05. The Legislature finds and declares that:

(a) Long-term care services in California include an uncoordinated array of categorical programs offering medical, social, and other support services that are funded and administered by a variety of federal, state, and local agencies and are replete with gaps, duplication, and little or no emphasis on the specific concerns of individual consumers.

(b) Although the need for a coordinated continuum of long-term care services has long been apparent, numerous obstacles prevent its development, including inflexible and inconsistent funding sources, economic incentives that encourage the placement of consumers in the highest levels of care, lack of coordination between aging, health, and social service agencies at both state and local levels, and inflexible state and federal regulations.

(c) The Office of the Legislative Analyst and others have pointed out that California's systems of service delivery in a number of areas are dysfunctional, due to the fragmentation of responsibility and funding for interrelated services. Principles proposed by the Legislative Analyst to guide the restructuring of these systems include recognizing program linkages, coordinating service delivery mechanisms, removing barriers to innovation, and instilling financial incentives to promote prevention and coordination.

(d) It is both more efficient and more humane to restructure long-term care services so that duplicative and confusing eligibility criteria, assessments, intake forms, and service limitations will not inhibit consumer satisfaction, impede improvements in consumer health status, and result in the ineffective use of resources.

(e) There is a growing interest in community-directed systems of funding and organizing the broad array of health, support, and

community living services needed by persons of all ages with disabilities.

(f) It is in the interest of those in need of long-term care services, and the state as a whole, to develop a long-term care system that provides dignity and maximum independence for the consumer, creates home and community-based alternatives to unnecessary out-of-home placement, and is cost-effective.

14139.1. (a) It is the intent of the Legislature to establish the Long-Term Care Integration Pilot Program that will integrate the financing and administration of long-term care services in up to five pilot project sites in the state. Contingent upon a state approved administrative action plan, at least one site shall be in a rural or underserved part of the state.

(b) It is further the intent of the Legislature to support, in each pilot project site, the development of a model integrated service delivery system that meets the needs of all beneficiaries, both those are in out-of-home placements, in a humane, appropriate, and cost-effective manner.

14139.11. The goals of this pilot program shall be to:

(a) Provide a continuum of social and health services that foster independence and self-reliance, maintain individual dignity, and allow consumers of long-term care services to remain an integral part of their family and community life.

(b) If out-of-home placement is necessary, to ensure that it is at the appropriate level of care, and to prevent unnecessary utilization of acute care hospitals.

(c) If family caregivers are involved in the long-term care of an individual, to support caregiving arrangements that maximize the family's ongoing relationship with, and care for, that individual.

(d) Deliver long-term care services in the least restrictive environment appropriate for the consumer.

(e) Encourage as much self direction as possible by consumers, given their capability and interest, and involve them and their family members as partners in the development and implementation of the pilot project.

(f) Identify performance outcomes that will be used to evaluate the appropriateness and quality of the services provided, as well as the efficacy and cost-effectiveness of each pilot project, including but not limited to, the use of acute and out-of-home care, consumer satisfaction, the health status of consumers, and the degree of independent living maintained among those served.

(g) Test a variety of models intended to serve different geographic areas, with differing populations and service availability.

(h) Achieve greater efficiencies through consolidated screening and reporting requirements.

(i) Allow each pilot project site to use existing funding sources in a manner that it determines will meet local need and that is cost-effective.

(j) Allow the pilot project sites to determine other services that may be necessary to meet the needs of eligible beneficiaries.

(k) Identify ways to expand funding options for the pilot program to include Medicare and other funding sources.

14139.12. It is the intent of the Legislature that the costs of this pilot program to the General Fund will not exceed the direct and indirect costs that existing programs would expect to incur had the integrated services not been provided through this pilot program. If the Department of Finance determines, and informs the director in writing, that the implementation of this pilot program will result in any additional costs to the state relative to the provision of long-term care services to eligible beneficiaries, the department may terminate the operation of all or any part of this pilot program. The state shall not be held liable for any additional costs incurred by a pilot project site. Any such determination made by the Department of Finance shall be available to any party upon request.

14139.13. (a) Any contract entered into pursuant to this article may be renewed if the long-term care services agency continues to meet the requirements of this article and the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may condition renewal on timely completion of a mutually agreed upon plan of corrections of any deficiencies.

(b) The department may terminate or decline to renew a contract in whole or in part, when the director determines that the action is necessary to protect the health of the beneficiaries or the funds appropriated to the Medi-Cal program. The administrative hearing requirements of Section 14123 do not apply to the nonrenewal or termination of a contract under this article.

(c) In order to achieve maximum cost savings the Legislature hereby determines that an expedited contract process for contracts under this article is necessary. Therefore, contracts under this article shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The contracts shall not take effect unless they are approved by the Department of Finance.

(d) The Commissioner of Corporations shall, at the director's request, immediately grant an exemption from Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code for purposes of carrying out any contract entered into pursuant to this article.

14139.2. The department shall serve as the lead agency for the administration of this chapter. The department's responsibilities shall include, but are not limited to:

(a) Development of criteria for the selection of pilot project sites.

(b) Selection of the pilot project sites to participate in the pilot program.

(c) Providing, or arranging for, technical assistance to participating sites.

(d) Development of specific performance outcome measures by which the program can be evaluated.

(e) Development of standards for complying with reporting requirements specified in state law for the programs integrated within the pilot program implemented pursuant to this article. The standards developed pursuant to this subdivision shall apply in lieu of any existing reporting obligations for the programs. The existing individual reporting requirements for programs integrated within the pilot program shall be deemed to have been met through the reports required by this section. Existing requirements for reports to the Office of Statewide Health Planning and Development shall not be eliminated.

(f) Seeking all federal waivers necessary for full implementation of the pilot program.

(g) Setting a payment rate consistent with Section 14139.5.

(h) Approval or disapproval of administrative action plans.

14139.21. The department may accept funding from federal agencies, foundations, or other nongovernmental sources and may contract with qualified consultants to assist with the provision of technical assistance, the development of data collection, reporting, and analysis systems, or any other purposes that further the goals of this demonstration program. The department shall not accept funds from any entity that stands to gain financially from implementation of the pilot program. In contracting with consultants to assist with the pilot program, the department shall specify timelines and delivery dates so as to ensure the continued implementation of the pilot program.

14139.22. (a) The department shall convene a working group that shall include the Director of Health Services, the Director of Social Services, and the Director of Aging, or the program staff from each of those departments who have direct responsibility for the programs listed in subdivision (b) of Section 14139.32, and may include the Director of Mental Health and the Director of Rehabilitation, or program staff from those departments with direct responsibilites for programs that may be included as a service in any pilot project site, and representatives from each pilot project site upon its selection.

(b) The department shall consult with the working group during the designing of the pilot program, in the selection of the pilot project sites, and in the monitoring of the program under this article, and shall utilize the working group as a resource for problem-solving and a means of maintaining interdepartmental and intersite communication.

(c) The working group shall strive to ensure that the pilot program under this article makes maximum use of home-based and community-based services, and throughout the continuum of care for

each beneficiary, encourages the use of the least restrictive environment in which the beneficiary can receive appropriate care.

14139.23. Upon the implementation of the pilot program, responsibility for administering the programs integrated within the pilot program shall be transferred to the department, and shall be specified in an interagency agreement between participating departments. Prior requirements for any program integrated within this pilot program shall be deemed to have been met through compliance with the requirements established by this article, by the department for the pilot program by each county's approved plan, and by the approved applicable federal waivers.

14139.24. The department shall seek all federal waivers necessary to allow for federal financial participation in the pilot program implemented pursuant to this article. This article shall not be implemented unless and until the director has executed a declaration that the approval of all necessary federal waivers has been obtained by the department.

14139.25. Notwithstanding any other provision of this article, costs to the General Fund shall not exceed the amount that would have been expended in the absence of the pilot program.

14139.3. (a) Pilot project sites may be comprised of a single county, a multicounty unit, or a subcounty unit.

(b) Each selected site shall do all of the following:

(1) Establish a consolidated long-term care services fund that shall accommodate state and federal fiscal and auditing requirements, shall be used solely for the purposes described in this article, and shall not be used for any county pooled investment fund.

(2) Identify a local entity, that may be either a governmental entity or a not-for-profit private agency, to administer the fund. The local entity may be one that already exists, or may be established for the express purpose of administering the fund. This agency shall be designated as the long-term care services agency and shall contract with the department to carry out this article.

(3) Develop and provide to the department an administrative action plan that shall include, but is not limited to:

(A) A complete description of the covered scope of services and programs to be integrated.

(B) A complete description of the proposed long-term care delivery system and how it will improve system efficiency and enhance service quality.

(C) Demonstration of a willingness and commitment by the long-term care services agency to work with local community groups, providers, and consumers to obtain their input.

(D) Proposed measurable performance outcomes that the pilot program is designed to achieve.

(E) A description of the expected impact on current program services to Medi-Cal eligible beneficiaries and consumers of non-Medi-Cal services included in the integrated system.

(F) Assurance of minimal disruption to current recipients of long-term care services during the phase-in of the pilot project.

(G) Reasonable assurance that services provided will be responsive to the religious, cultural, and language needs of beneficiaries.

(H) Assurances that providers who serve the needs of special populations such as religious and cultural groups or residents of multilevel facilities as defined in paragraph (9) of subdivision (d) of Section 15432 of the Government Code and community care retirement communities as defined in subdivision (u) of Section 1771 of the Health and Safety Code, will be able to continue to serve those persons when willing to contract under the same terms and conditions as similar providers.

(I) Specific alternative concepts, requirements, staffing patterns, or methods for providing services under the pilot project.

(J) A process to assure that Medi-Cal dollars are appropriately expended in accordance with federal requirements.

(K) A description of how the pilot project site will maintain adequate fiscal control and ensure quality of care for beneficiaries.

(L) A description of how the pilot project site will coordinate, relate to, or integrate with Medi-Cal managed care plans, local managed care plans, and other organizations which provide services not part of the pilot project.

(M) A proposed timeline for planning and startup of the pilot project.

(N) An estimate of costs and savings.

(O) Demonstration of the financial viability of the plan.

(c) The administrative action plan shall reflect a planning process that includes long-term care consumers, their families, and representatives of organizations that represent them, organizations that provide long-term care services, and employees who deliver direct long-term care services. The planning process may include, but is not limited to, the members of the local advisory committee required pursuant to Section 14139.31.

(d) The administrative action plan shall receive the approval of the county board of supervisors before it is submitted to the department for final state approval. The board of supervisors shall present evidence of the commitment to the administrative action plan of all publicly funded agencies that currently serve consumers who will be eligible under the pilot project, and all publicly and nonpublicly funded agencies that will be responsible for providing services under the pilot project. This evidence may include resolutions adopted by agency governing bodies, memoranda of understanding, or other agreements pertinent to the implementation of the plan.

14139.31. In order to be selected, a pilot project site shall demonstrate that it has an active advisory committee that includes consumers of long-term care services, representatives of local

organizations of persons with the disabilities, seniors, representatives of local senior organizations, representatives of employees who deliver direct long-term care services, and representatives of organizations that provide long-term care services. At least one-half of the members of the advisory committee shall be consumers of services provided under this chapter, or their representatives.

14139.32. (a) The administrative action plan shall identify the funds to be transferred into the consolidated long-term care services fund.

(b) The funds shall include Medi-Cal long-term institutional care, the Medi-Cal Personal Care Services Program, and the In-Home Supportive Services Program and may include funds from the following programs and services:

(1) Multipurpose Seniors Services Program.

(2) Alzheimer's Day Care Resources Centers Program.

(3) Linkages Program.

(4) Respite Program.

(5) Adult Day Health Care Program.

(6) Medi-Cal home health agency services.

(7) Medi-Cal home-based and community-based waiver programs.

(8) Medi-Cal hospice services.

(9) Medi-Cal acute care hospital services.

(10) Other Medi-Cal services, including, but not limited to, primary, ancillary, and acute care.

(c) Optional program funds enumerated in subdivision (b) of Section 14139.32 shall be included in the long-term care services fund in any case where a program was funded prior to its integration into the pilot project.

(d) In determining which project sites to select for participation in the pilot program, the department shall give preference to those sites that include funds from the largest number of programs existing within the project site at the time the site applies for selection, provided the administrative action plan meets all other selection criteria. With the exception of up to one rural county, preference shall be given to project sites that include primary, ancillary, and acute care in the consolidated fund, provided their administrative action plan meets all other selection criteria.

14139.33. The administrative action plan shall delineate the services to be provided to all eligible beneficiaries. At a minimum, services to be provided shall include all of the following:

(a) Care or case management, including assessment, development of a service plan in conjunction with the consumer and other appropriate parties, authorization and arrangement for purchase of services or linkages with other appropriate entities, service coordination activities, and follow-up to determine whether the services received were appropriate and consistent with the service plan. Service coordination activities shall ensure that the

records of each beneficiary are maintained in a consistent and complete manner and are accessible to the beneficiary of his or her family, and providers involved in his or her care. This shall be the case whether a beneficiary resides in his or her own home or in a licensed facility.

(b) Education of beneficiaries, their families, and others in their informal support network, including independent living skills training to maximize the independence of the beneficiary.

(c) In-home services.

(d) Adult day services.

(e) Institutional long-term care.

(f) Hospice services.

(g) Linkages to acute care services and primary care services if they are not included in the integrated plan as determined in the administrative action plan.

14139.34. The administrative action plan may also include any of the following services:

(a) Transportation.

(b) Home modification.

(c) Medical services, including, but not limited to, primary, ancillary, and acute care.

(d) Housing and residential services.

(e) Other services determined by the pilot project to be necessary to meet the needs of eligible beneficiaries.

14139.35. The department may exempt a pilot project site from the requirements of subdivisions (d) and (f) of Section 14139.33 if both the following conditions are met:

(a) State funds were not being used in the geographic area covered by the pilot projects to provide those services at the time of application to the pilot program.

(b) The pilot project site can demonstrate to the department how it plans to develop these services, and within what timeframe, during the pilot program.

14139.36. (a) If primary, ancillary, and acute care are not included among the services offered by a pilot project site, the administrative action plan shall include all of the following:

(1) A mechanism for tracking the use of these services by beneficiaries of the plan.

(2) Provisions for the future inclusion of those services in the integrated plan, including the process and timeline by which they will be integrated.

(b) The department shall, in consultation with the pilot project sites, apply to the federal health care financing administration for a waiver that allows the pilot projects to include Medicare funds in the long-term care services fund. Upon receipt of such a waiver, within a time period to be designated by the department specific to each site, each pilot project site shall assume responsibility for primary, ancillary, and acute care services.

14139.37. The administrative action plan shall delineate specifically how the pooled funds will be used to deliver services to all eligible recipients in the geographic area covered by the pilot project site.

14139.38. Participating counties shall continue their financial maintenance of effort for each of the programs integrated within the pilot program under this article. The amount of a county's maintenance of effort shall be the same as if the program were not integrated within the pilot program pursuant to this article, and funds equal to this amount shall be deposited in the local consolidated long-term care services fund.

14139.4. (a) The long-term care services agency shall be responsible and at risk for implementing the administrative action plan. The long-term care services agency shall do all of the following:

(1) Respond, or provide for response to, consumer needs on a 24-hour, seven-day-a-week basis.

(2) Conduct comprehensive assessments.

(3) Determine eligibility for long-term care services based on the assessment information.

(4) Provide for contractual arrangements for the provision of, and payment for, sufficient services to meet the long-term care needs of the eligible beneficiary in his or her home, community, residential facility, nursing facility, or other location based on the mix of programs or services included in the administrative action plan.

(5) Provide linkages to acute care hospitals.

(6) Maintain control over utilization of services that are authorized.

(7) Monitor the quality of care provided to consumers.

(8) Maintain a consumer grievance process.

(9) Manage the overall cost-effectiveness of the pilot project for its duration.

(b) Services may be provided through contracts with community-based providers. In instances where a specific service does not exist in the community, the long-term care services agency may facilitate the development of local programs that provide these services or may provide the services directly, if doing so can be demonstrated to be cost-effective.

14139.41. (a) For purposes of this chapter, "eligible beneficiaries" shall be defined as persons meeting all the following criteria:

(1) Are Medi-Cal eligible.

(2) Are functionally or cognitively impaired. For purposes of this paragraph "cognitively impaired" means having an impairment caused by organic brain disorder or disease.

(3) Are adults.

(4) Need assistance with two or more activities of daily living or are unable to remain living independently without the long-term

care services provided through the pilot program operated pursuant to this article.

(b) To the extent eligible beneficiaries also receive services from a regional center that serves a pilot project site, the pilot project shall delineate in its administrative action plan how services will be coordinated by the two agencies.

14139.42. (a) Each pilot project site shall serve all eligible beneficiaries who live in the geographic area served by the long-term care services agency. In order to eliminate duplicative administrative costs and achieve a more efficient delivery system, pilot project sites shall also serve non-Medi-Cal eligible individuals who, but for the implementation of the pilot project, would have received services from programs whose funds are included in the consolidated long-term care services fund.

(b) Funding sources allocated for persons who are not eligible for Medi-Cal benefits may be integrated into the consolidated long-term care services fund. To the extent those funds are spent on services for persons who are not eligible for Medi-Cal benefits, they shall be segregated from capitated funds for Medi-Cal beneficiaries. No funds derived from the capitated Medi-Cal rate may be used for persons who are not eligible for Medi-Cal.

14139.43. This article shall not preclude a long-term care services agency from entering into additional agreements, separate from the pilot project, to serve additional individuals or populations.

14139.44. Pilot project sites shall ensure provider reimbursement rates that are adequate to maintain compliance with applicable federal and state requirements.

14139.5. The department shall set a capitated rate of payment that is actuarily sound and that is based on the number of beneficiaries who are eligible for Medi-Cal benefits to be enrolled in the pilot project, the mix of provided services and programs being integrated, and past Medi-Cal expenditures for services. The rate shall reflect, and the contract shall delineate, the rate at which the local long-term care services agency shall assume the total risk and the mechanisms that shall be used, which may include, but are not limited to, risk corridors, reinsurance, or alternative methods of risk assumption.

14139.51. If the department determines that a program or programs cannot reasonably be capitated, funds may be transferred separately from the capitation payment. The amount of those noncapitated funds shall be based on amounts that would have been expended by the state for those programs in the absence of the pilot program implemented under this article.

It is the intent of the Legislature that, if any local pilot project experiences net savings, those savings shall be used for project expansion and improvement, or to build the required tangible net equity, or if there is no need for expansion or improvement or to build

tangible net equity, may be shared by the long-term care services agency and the state.

14139.53. (a) The department shall develop criteria to ensure that pilot project sites maintain fiscal solvency, including but not limited to, the following:

(1) The capability to achieve and maintain sufficient fiscal tangible net equity within a timeframe to be specified by the department for each pilot project site.

(2) The capability to maintain prompt and timely provider payments.

(3) A management information system that is approved by the department and is capable of meeting the requirements of the pilot program.

(b) Any pilot project established under this article shall immediately notify the department in writing of any fact or facts that are likely to result in the pilot project or the long-term care services agency being unable to meet its financial obligations. The written notice shall describe the fact or facts, the anticipated financial consequences, and the actions that will be taken to address the anticipated consequences, and shall be made available upon request unless otherwise prohibited by law.

14139.6. (a) It is the intent of the Legislature that local entities that are potential participants in this pilot program shall be assured of sufficient time to plan their pilot projects, and that the selected pilot project sites shall be assured of sufficient time to phase in the implementation of their programs. To that end, it is the intent of the Legislature that the department, in consultation with potential pilot project sites and the pilot program working group, shall develop a realistic timeline with guidelines for the planning and implementation of pilot projects.

(b) Nothing in this chapter shall prohibit the department, in consultation with the pilot program working group, from establishing a two-stage selection process in which local pilot project sites may be selected on a preliminary basis. Final selection of local pilot project sites shall be based on the completion of an administrative action plan that the department determines satisfactorily meets the selection criteria.

14139.61. The department may adopt emergency regulations as necessary to implement this article in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

14139.62. The department shall evaluate the effectiveness of the Long-Term Care Integration Pilot Program.

14139.7. This article shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. Article 4.1 (commencing with Section 14139.7) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 3. Sections 1 and 2 of this act shall not become operative if Assembly Bill 1040 of the 1995–96 Regular Session is chaptered and adds Article 4.05 (commencing with Section 14139.1) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

CHAPTER 875

An act to add Article 4.05 (commencing with Section 14139.05) to, and to repeal Article 4.1 (commencing with Section 14139.7) of, Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to long-term care.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Article 4.05 (commencing with Section 14139.05) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 4.05. Long-Term Care Integration Pilot Program

14139.05. The Legislature finds and declares that:

(a) Long-term care services in California include an uncoordinated array of categorical programs offering medical, social, and other support services that are funded and administered by a variety of federal, state, and local agencies and are replete with gaps, duplication, and little or no emphasis on the specific concerns of individual consumers.

(b) Although the need for a coordinated continuum of long-term care services has long been apparent, numerous obstacles prevent its development, including inflexible and inconsistent funding sources, economic incentives that encourage the placement of consumers in the highest levels of care, lack of coordination between aging, health, and social service agencies at both state and local levels, and inflexible state and federal regulations.

(c) The office of the Legislative Analyst and others have pointed out that California's systems of service delivery in a number of areas

are dysfunctional, due to the fragmentation of responsibility and funding for interrelated services. Principles proposed by the Legislative Analyst to guide the restructuring of these systems include recognizing program linkages, coordinating service delivery mechanisms, removing barriers to innovation, and instilling financial incentives to promote prevention and coordination.

(d) It is both more efficient and more humane to restructure long-term care services so that duplicative and confusing eligibility criteria, assessments, intake forms, and service limitations will not inhibit consumer satisfaction, impede improvements in consumer health status, and result in the ineffective use of resources.

(e) There is a growing interest in community-directed systems of funding and organizing the broad array of health, support, and community living services needed by persons of all ages with disabilities.

(f) It is in the interest of those in need of long-term care services, and the state as a whole, to develop a long-term care system that provides dignity and maximum independence for the consumer, creates home and community based alternatives to unnecessary out-of-home placement, and is cost effective.

14139.1. (a) It is the intent of the Legislature to establish the Long-Term Care Integration Pilot Program that will integrate the financing and administration of long-term care services in up to five pilot project sites in the state. Contingent upon a state approved administrative action plan, at least one site shall be in a rural or underserved part of the state.

(b) It is further the intent of the Legislature to support, in each pilot project site, the development of a model integrated service delivery system that meets the needs of all beneficiaries, both those who live in their own homes and those who are in out-of-home placements, in a humane, appropriate, and cost-effective manner.

14139.11. The goals of this pilot program shall be to:

(a) Provide a continuum of social and health services that foster independence and self-reliance, maintain individual dignity, and allow consumers of long-term care services to remain an integral part of their family and community life.

(b) If out-of-home placement is necessary, to ensure that it is at the appropriate level of care, and to prevent unnecessary utilization of acute care hospitals.

(c) If family caregivers are involved in the long-term care of an individual, to support caregiving arrangements that maximize the family's ongoing relationship with, and care for, that individual.

(d) Deliver long-term care services in the least restrictive environment appropriate for the consumer.

(e) Encourage as much self direction as possible by consumers, given their capability and interest, and involve them and their family members as partners in the development and implementation of the pilot project.

(f) Identify performance outcomes that will be used to evaluate the appropriateness and quality of the services provided, as well as the efficacy and cost effectiveness of each pilot project, including, but not limited to, the use of acute and out-of-home care, consumer satisfaction, the health status of consumers, and the degree of independent living maintained among those served.

(g) Test a variety of models intended to serve different geographic areas, with differing populations and service availability.

(h) Achieve greater efficiencies through consolidated screening and reporting requirements.

(i) Allow each pilot project site to use existing funding sources in a manner that it determines will meet local need and that is cost-effective.

(j) Allow the pilot project sites to determine other services that may be necessary to meet the needs of eligible beneficiaries.

(k) Identify ways to expand funding options for the pilot program to include medicare and other funding sources.

14139.12. It is the intent of the Legislature that the costs of this pilot program to the General Fund will not exceed the direct and indirect costs that existing programs would expect to incur had the integrated services not been provided through this pilot program. If the Department of Finance determines, and informs the director in writing, that the implementation of this pilot program will result in any additional costs to the state relative to the provision of long-term care services to eligible beneficiaries, the department may terminate the operation of all or any part of this pilot program. The state shall not be held liable for any additional costs incurred by a pilot project site. Any such determination made by the Department of Finance shall be available to any party upon request.

14139.13. (a) Any contract entered into pursuant to this article may be renewed if the long-term care services agency continues to meet the requirements of this article and the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may condition renewal on timely completion of a mutually agreed upon plan of corrections of any deficiencies.

(b) The department may terminate or decline to renew a contract in whole or in part when the director determines that the action is necessary to protect the health of the beneficiaries or the funds appropriated to the Medi-Cal program. The administrative hearing requirements of Section 14123 do not apply to the nonrenewal or termination of a contract under this article.

(c) In order to achieve maximum cost savings the Legislature hereby determines that an expedited contract process for contracts under this article is necessary. Therefore, contracts under this article shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The contracts shall

not take effect unless they are approved by the Department of Finance.

(d) The Commissioner of Corporations shall, at the director's request, immediately grant an exemption from Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code for purposes of carrying out any contract entered into pursuant to this article.

14139.2. The department shall serve as the lead agency for the administration of this chapter. The department's responsibilities shall include, but are not limited to:

(a) Development of criteria for the selection of pilot project sites.

(b) Selection of the pilot project sites to participate in the pilot program.

(c) Providing, or arranging for, technical assistance to participating sites.

(d) Development of specific performance outcome measures by which the program can be evaluated.

(e) Development of standards for complying with reporting requirements specified in state law for the programs integrated within the pilot program implemented pursuant to this article. The standards developed pursuant to this subdivision shall apply in lieu of any existing reporting obligations for the programs. The existing individual reporting requirements for programs integrated within the pilot program shall be deemed to have been met through the reports required by this section. Existing requirements for reports to the Office of Statewide Health Planning and Development shall not be eliminated.

(f) Seeking all federal waivers necessary for full implementation of the pilot program.

(g) Setting a payment rate consistent with Section 14139.5.

(h) Approval or disapproval of administrative action plans.

14139.21. The department may accept funding from federal agencies, foundations or other nongovernmental sources and may contract with qualified consultants to assist with the provision of technical assistance, the development of data collection, reporting, and analysis systems, or any other purposes that further the goals of this demonstration program. The department shall not accept funds from any entity that stands to gain financially from implementation of the pilot program. In contracting with consultants to assist with the pilot program, the department shall specify timelines and delivery dates so as to ensure the continued implementation of the pilot program.

14139.22. (a) The department shall convene a working group that shall include the Director of Health Services, the Director of Social Services, and the Director of Aging, or the program staff from each of those departments who have direct responsibility for the programs listed in subdivision (b) of Section 14139.32, and may include the Director of Mental Health and the Director of

Rehabilitation, or program staff from those departments with direct responsibilities for programs that may be included as a service in any pilot project site, and representatives from each pilot project site upon its selection.

(b) The department shall consult with the working group during the designing of the pilot program, in the selection of the pilot project sites, and in the monitoring of the program under this article, and shall utilize the working group as a resource for problem-solving and a means of maintaining interdepartmental and intersite communication.

(c) The working group shall strive to ensure that the pilot program under this article makes maximum use of home-based and community-based services, and throughout the continuum of care for each beneficiary, encourages the use of the least restrictive environment in which the beneficiary can receive appropriate care.

14139.23. Upon the implementation of the pilot program, responsibility for administering the programs integrated within the pilot program shall be transferred to the department, and shall be specified in an interagency agreement between participating departments. Prior requirements for any program integrated within this pilot program shall be deemed to have been met through compliance with the requirements established by this article, by the department for the pilot program by each county's approved plan, and by the approved applicable federal waivers.

14139.24. The department shall seek all federal waivers necessary to allow for federal financial participation in the pilot program implemented pursuant to this article. This article shall not be implemented unless and until the director has executed a declaration that the approval of all necessary federal waivers has been obtained by the department.

14139.25. Notwithstanding any other provision of this article, costs to the General Fund shall not exceed the amount that would have been expended in the absence of the pilot program.

14139.3. (a) Pilot project sites may be comprised of a single county, a multicounty unit, or a subcounty unit.

(b) Each selected site shall do all of the following:

(1) Establish a consolidated long-term care services fund that shall accommodate state and federal fiscal and auditing requirements, shall be used solely for the purposes described in this article, and shall not be used for any county pooled investment fund.

(2) Identify a local entity, that may be either a governmental entity or a not-for-profit private agency, to administer the fund. The local entity may be one that already exists, or may be established for the express purpose of administering the fund. This agency shall be designated as the long-term care services agency and shall contract with the department to carry out this article.

(3) Develop and provide to the department an administrative action plan that shall include, but is not limited to:

(A) A complete description of the covered scope of services and programs to be integrated.

(B) A complete description of the proposed long-term care delivery system and how it will improve system efficiency and enhance service quality.

(C) Demonstration of a willingness and commitment by the long-term care services agency to work with local community groups, providers, and consumers to obtain their input.

(D) Proposed measurable performance outcomes that the pilot program is designed to achieve.

(E) A description of the expected impact on current program services to Medi-Cal eligible beneficiaries and consumers of non-Medi-Cal services included in the integrated system.

(F) Assurance of minimal disruption to current recipients of long-term care services during the phase-in of the pilot project.

(G) Reasonable assurance that services provided will be responsive to the religious, cultural, and language needs of beneficiaries.

(H) Assurances that providers who serve the needs of special populations such as religious and cultural groups or residents of multilevel facilities as defined in paragraph (9) of subdivision (d) of Section 15432 of the Government Code and community care retirement communities as defined in subdivision (u) of Section 1771 of the Health and Safety Code, will be able to continue to serve those persons when willing to contract under the same terms and conditions as similar providers.

(I) Specific alternative concepts, requirements, staffing patterns, or methods for providing services under the pilot project.

(J) A process to assure that Medi-Cal dollars are appropriately expended in accordance with federal requirements.

(K) A description of how the pilot project site will maintain adequate fiscal control and ensure quality of care for beneficiaries.

(L) A description of how the pilot project site will coordinate, relate to, or integrate with Medi-Cal managed care plans, local managed care plans, and other organizations which provide services not part of the pilot project.

(M) A proposed timeline for planning and startup of the pilot project.

(N) An estimate of costs and savings.

(O) Demonstration of the financial viability of the plan.

(c) The administrative action plan shall reflect a planning process that includes long-term care consumers, their families, and organizations that represent them, organizations that provide long-term care services, and representatives of employees who deliver direct long-term care services. The planning process may include, but is not limited to, the members of the local advisory committee required pursuant to Section 14139.31.

(d) The administrative action plan shall receive the approval of the county board of supervisors before it is submitted to the department for final state approval. The board of supervisors shall present evidence of the commitment to the administrative action plan of all publicly funded agencies that currently serve consumers who will be eligible under the pilot project, and all publicly and nonpublicly funded agencies that will be responsible for providing services under the pilot project. This evidence may include resolutions adopted by agency governing bodies, memoranda of understanding, or other agreements pertinent to the implementation of the plan.

14139.31. In order to be selected, a pilot project site shall demonstrate that it has an active advisory committee that includes consumers of long-term care services, representatives of local organizations of persons with disabilities, seniors, representatives of local senior organizations, representatives of employees who deliver direct long-term care services, and representatives of organizations that provide long-term care services. At least one-half of the members of the advisory committee must be consumers of services provided under this chapter or their representatives.

14139.32. (a) The administrative action plan shall identify the funds to be transferred into the consolidated long-term care services fund.

(b) The funds shall include Medi-Cal long-term institutional care, the Medi-Cal Personal Care Services Program, and the In-Home Supportive Services Program and may include funds from the following programs and services:

(1) Multipurpose Seniors Services Program.

(2) Alzheimer's Day Care Resources Centers Program.

(3) Linkages Program.

(4) Respite Program.

(5) Adult Day Health Care Program.

(6) Medi-Cal home health agency services.

(7) Medi-Cal home-based and community-based waiver programs.

(8) Medi-Cal hospice services.

(9) Medi-Cal acute care hospital services.

(10) Other Medi-Cal services, including, but not limited to, primary, ancillary, and acute care.

(c) Optional program funds enumerated in subdivision (b) of Section 14139.32 shall be included in the long-term care services fund in any case where a program was funded prior to its integration into the pilot project.

(d) In determining which project sites to select for participation in the pilot program, the department shall give preference to those sites that include funds from the largest number of programs existing within the project site at the time the site applies for selection, provided the administrative action plan meets all other selection

criteria. With the exception of up to one rural county, preference shall be given to project sites that include primary, ancillary, and acute care in the consolidated fund, provided their administrative action plan meets all other selection criteria.

14139.33. The administrative action plan shall delineate the services to be provided to all eligible beneficiaries. At a minimum, services to be provided shall include all of the following:

(a) Care or case management, including assessment, development of a service plan in conjunction with the consumer and other appropriate parties, authorization and arrangement for purchase of services or linkages with other appropriate entities, service coordination activities, and followup to determine whether the services received were appropriate and consistent with the service plan. Service coordination activities shall ensure that the records of each beneficiary are maintained in a consistent and complete manner and are accessible to the beneficiary or his or her family, and providers involved in his or her care. This shall be the case whether a beneficiary resides in his or her own home or in a licensed facility.

(b) Education of beneficiaries, their families, and others in their informal support network, including independent living skills training to maximize the independence of the beneficiary.

(c) In-home services.

(d) Adult day services.

(e) Institutional long-term care.

(f) Hospice services.

(g) Linkages to acute care services and primary care services, if they are not included in the integrated plan.

14139.34. The administrative action plan may also include any of the following services:

(a) Transportation.

(b) Home modification.

(c) Medical services, including, but not limited to, primary, ancillary, and acute care.

(d) Housing and residential services.

(e) Other services determined by the pilot project to be necessary to meet the needs of eligible beneficiaries.

14139.35. The department may exempt a pilot project site from the requirements of subdivisions (d) and (f) of Section 14139.33 if both the following conditions are met:

(a) State funds were not being used in the geographic area covered by the pilot projects to provide those services at the time of application to the pilot program.

(b) The pilot project site can demonstrate to the department how it plans to develop these services, and within what timeframe, during the pilot program.

14139.36. (a) If primary, ancillary, and acute care are not included among the services offered by a pilot project site, the administrative action plan shall include all of the following:

(1) A mechanism for tracking the usage of these services by beneficiaries of the plan.

(2) Provisions for the future inclusion of those services in the integrated plan, including the process and timeline by which they will be integrated.

(b) The department shall, in consultation with the pilot project sites, apply to the federal health care financing administration for a waiver that allows the pilot projects to include medicare funds in the long-term care services fund. Upon receipt of the waiver, within a time period to be designated by the department specific to each site, each pilot project site shall assume responsibility for primary, ancillary, and acute care services.

14139.37. The administrative action plan shall delineate specifically how the pooled funds will be used to deliver services to all eligible recipients in the geographic area covered by the pilot project site.

14139.38. Participating counties shall continue their financial maintenance of effort for each of the programs integrated within the pilot program under this article. The amount of a county's maintenance of effort shall be the same as if the program were not integrated within the pilot program pursuant to this article, and funds equal to this amount shall be deposited in the local consolidated long-term care services fund.

14139.4. (a) The long-term care services agency shall be responsible and at risk for implementing the administrative action plan. The long-term care services agency shall do all of the following:

(1) Respond, or provide for response to, consumer needs on a 24-hour, seven-day-a-week basis.

(2) Conduct comprehensive assessments.

(3) Determine eligibility for long-term care services based on the assessment information.

(4) Provide for contractual arrangements for the provision of, and payment for, sufficient services to meet the long-term care needs of the eligible beneficiary in his or her home, community, residential facility, nursing facility, or other location based on the mix of programs or services included in the administrative action plan.

(5) Provide linkages to acute care hospitals.

(6) Maintain control over utilization of services that are authorized.

(7) Monitor the quality of care provided to consumers.

(8) Maintain a consumer grievance process.

(9) Manage the overall cost-effectiveness of the pilot project for its duration.

(b) Services may be provided through contracts with community-based providers. In instances where a specific service

does not exist in the community, the long-term care services agency may facilitate the development of local programs that provide these services or may provide the services directly, if doing so can be demonstrated to be cost effective.

14139.41. (a) For purposes of this chapter, "eligible beneficiaries" shall be defined as persons meeting all the following criteria:

(1) Are Medi-Cal eligible.

(2) Are functionally or cognitively impaired. For purposes of this paragraph "cognitively impaired" means having an impairment caused by organic brain disorder or disease.

(3) Are adults.

(4) Need assistance with two or more activities of daily living or are unable to remain living independently without the long-term care services provided through the pilot program operated pursuant to this article.

(b) To the extent eligible beneficiaries also receive services from a regional center that serves a pilot project site, the pilot project shall delineate in its administrative action plan how services will be coordinated by the two agencies.

14139.42. (a) Each pilot project site shall serve all eligible beneficiaries who live in the geographic area served by the long-term care services agency. In order to eliminate duplicative administrative costs and to achieve a more efficient delivery system, pilot project sites shall also serve non-Medi-Cal eligible individuals who, but for the implementation of the pilot project, would have received services from programs whose funds are included in the consolidated long-term care services fund.

(b) Funding sources allocated for persons who are not eligible for Medi-Cal benefits may be integrated into the consolidated long-term care services fund. To the extent those funds are spent on services for persons who are not eligible for Medi-Cal benefits, they shall be segregated from capitated funds for Medi-Cal beneficiaries. No funds derived from the capitated Medi-Cal rate may be used for persons who are not eligible for Medi-Cal.

14139.43. This article shall not preclude a long-term care services agency from entering into additional agreements, separate from the pilot project, to serve additional individuals or populations.

14139.44. Pilot project sites shall ensure provider reimbursement rates that are adequate to maintain compliance with applicable federal and state requirements.

14139.5. The department shall set a capitated rate of payment that is actuarially sound and that is based on the number of beneficiaries who are eligible for Medi-Cal benefits to be enrolled in the pilot project, the mix of provided services and programs being integrated, and past Medi-Cal expenditures for services. The rate shall reflect, and the contract shall delineate, the rate at which the local long-term care services agency shall assume the total risk and

the mechanisms that shall be used, which may include, but are not limited to, risk corridors, reinsurance, or alternative methods of risk assumption.

14139.51. If the department determines that a program or programs cannot reasonably be capitated, funds may be transferred separately from the capitation payment. The amount of those noncapitated funds shall be based on amounts that would have been expended by the state for those programs in the absence of the pilot program implemented under this article.

It is the intent of the Legislature that, if any local pilot project experiences net savings, those savings shall be used for project expansion and improvement, or to build the required tangible net equity, or if there is no need for expansion or improvement or to build tangible net equity, may be shared by the long-term care services agency and the state.

14139.53. (a) The department shall develop criteria to ensure that pilot project sites maintain fiscal solvency, including by not limited to, the following:

(1) The capability to achieve and maintain sufficient fiscal tangible net equity within a timeframe to be specified by the department for each pilot project site.

(2) The capability to maintain prompt and timely provider payments.

(3) A management information system that is approved by the department and is capable of meeting the requirements of the pilot program.

(b) Any pilot project established under this article shall immediately notify the department in writing of any fact or facts that are likely to result in the pilot project or the long-term care services agency being unable to meet its financial obligations. The written notice shall describe the fact or facts, the anticipated financial consequences, and the actions that will be taken to address the anticipated consequences, and shall be made available upon request unless otherwise prohibited by law.

14139.6. (a) It is the intent of the Legislature that local entities that are potential participants in this pilot program shall be assured of sufficient time to plan their pilot projects, and that the selected pilot project sites shall be assured of sufficient time to phase in the implementation of their programs. To that end, it is the intent of the Legislature that the department, in consultation with potential pilot project sites and the pilot program working group, shall develop a realistic timeline with guidelines for the planning and implementation of pilot projects.

(b) Nothing in this chapter shall prohibit the department, in consultation with the pilot program working group, from establishing a two-stage selection process in which local pilot project sites may be selected on a preliminary basis. Final selection of local pilot project sites shall be based on the completion of an administrative action plan

that the department determines satisfactorily meets the selection criteria.

14139.61. The department may adopt emergency regulations as necessary to implement this article in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

14139.62. Contingent on the availability of funding, the department shall evaluate the effectiveness of each pilot project on a schedule that coincides with federal waiver reporting requirements, and shall make this information available upon request. The department's evaluation shall include, but not be limited to, the following:

(a) Whether or not the pilot project has reduced the fragmentation and improved the coordination of the long-term care delivery system in the pilot project area.

(b) Whether or not the long-term care delivery system is more efficient and makes better use of available resources.

(c) Whether or not the goals identified in Section 14139.11 have been met.

SEC. 2. Article 4.1 (commencing with Section 14139.7) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

CHAPTER 876

An act to amend Section 50050 of the Government Code, and to amend Sections 422.75, 422.95, 1547, 2085.5, and 11413 of the Penal Code, relating to hate crimes.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 50050 of the Government Code, as amended by Chapter 313 of the Statutes of 1995, is amended to read:

50050. For purposes of this article, "local agency" includes all districts. Except as otherwise provided by law, money, excluding restitution to victims, that is not the property of a local agency that remains unclaimed in its treasury or in the official custody of its officers for three years is the property of the local agency after notice

if not claimed or if no verified complaint is filed and served. At any time after the expiration of the three-year period, the treasurer of the local agency may cause a notice to be published once a week for two successive weeks in a newspaper of general circulation published in the local agency. Money representing restitution collected on behalf of victims shall be either deposited into the Restitution Fund or used by the local agency for purposes of victim services after the expiration of the three-year period. However, with respect to moneys deposited with the county treasurer pursuant to Section 7663 of the Probate Code, this three-year period to claim money held by a local agency is extended for an infant or person of unsound mind until one year from the date his or her disability ceases.

For purposes of this section, "infant" and "person of unsound mind" have the same meaning as given to those terms as used in Section 1441 of the Code of Civil Procedure.

SEC. 1.5. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing

a sentence enhancement pursuant to Section 12022.5 or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

SEC. 2. Section 422.95 of the Penal Code is amended to read:

422.95. (a) In the case of any person who is granted probation for any offense defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, the court may order that the defendant be required to do one or all of the following as a condition of probation:

(1) Complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and anti-social behavior if that class, program, or training is available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

(2) Make payments or other compensation to a community-based program or local agency that provides services to victims of hate violence.

(3) Be required to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's acts.

(b) Any payments or other compensation ordered under this section shall be in addition to restitution payments required under Section 1203.04, and shall be made only after that restitution is paid in full.

(c) It is the intent of the Legislature to encourage counties, cities, and school districts to establish education and training programs to prevent violations of civil rights and hate crimes.

SEC. 3. Section 1547 of the Penal Code is amended to read:

1547. (a) The Governor may offer a reward of not more than fifty thousand dollars ($50,000), payable out of the General Fund, for

information leading to the arrest and conviction of any of the following:

(1) Any convict who has escaped from a state prison, prison camp, prison farm, or the custody of any prison officer or employee or as provided in Section 3059 or 4530.

(2) Any person who has committed, or is charged with the commission of, an offense punishable by death.

(3) Any person engaged in the robbery or hijacking of, or any attempt to rob or hijack, any person upon or in charge of, in whole or in part, any public conveyance engaged at the time in carrying passengers within this state.

(4) Any person who attempts to murder either in the first or second degree, assaults with a deadly weapon, or inflicts serious bodily harm upon a peace officer or firefighter who is acting in the line of duty.

(5) Any person who has committed a crime involving the burning or bombing of public or private property, including any public hospital housed in a privately owned facility.

(6) Any person who has committed a crime involving the burning or bombing of any private hospital. A reward may be offered by the Governor in conjunction with such a crime only if a reward in conjunction with the same crime is offered by the hospital, or any other public or private donor on its behalf. The amount of the reward offered by the Governor shall not exceed the aggregate amount offered privately, or fifty thousand dollars ($50,000), whichever is less. Nothing in this paragraph shall preclude a private hospital, or any public or private donor on its behalf, from offering a reward in an amount exceeding fifty thousand dollars ($50,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(7) Any person who commits a violation of Section 11413.

(8) Any person who commits a violation of Section 207.

(9) Any person who has committed a crime involving the burning or bombing of any bookstore or public or private library not subject to Section 11413. A reward may be offered by the Governor in conjunction with such a crime only if a reward in conjunction with the same crime is offered by the bookstore or library, or any other public or private donor on its behalf. The amount of the reward offered by the Governor shall not exceed the aggregate amount offered privately, or fifty thousand dollars ($50,000), whichever is less. Nothing in this paragraph shall preclude a bookstore or public or private library, or any public or private donor on its behalf, from offering a reward in an amount exceeding fifty thousand dollars ($50,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain

confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(10) Any person who commits a violation of Section 454 or 463.

(11) Any person who willfully and maliciously sets fire to, or who attempts to willfully and maliciously set fire to, any property that is included within a hazardous fire area designated by the State Board of Forestry pursuant to Section 4252 of the Public Resources Code or by the Director of Forestry and Fire Protection pursuant to Section 4253 of the Public Resources Code, if the fire, or attempt to set a fire, results in death or great bodily injury to anyone, including fire protection personnel, or if the fire causes substantial structural damage.

(12) Any person who has committed, or is charged with the commission of, a felony that is punishable under Section 422.75 and that resulted in serious bodily injury or in property damage of more than ten thousand dollars ($10,000).

(13) Any person who commits an act that violates Section 11411, if the Governor determines that the act is one in a series of similar or related acts committed in violation of that section by the same person or group.

(b) The Governor may offer a reward of not more than one hundred thousand dollars ($100,000) for information leading to the arrest and conviction of any person who kills a peace officer or firefighter who is acting in the line of duty.

(c) The reward shall be paid to the person giving the information, immediately upon the conviction of the person so arrested.

(d) As used in this section, "hijacking" means an unauthorized person causing, or attempting to cause, by violence or threat of violence, a public conveyance to go to an unauthorized destination.

SEC. 4. Section 2085.5 of the Penal Code, as amended by Chapter 313 of the Statutes of 1995, is amended to read:

2085.5. (a) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the State Board of Control for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (f) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the order

amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the State Board of Control for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. No deductions shall be made on behalf of victims who have not filed an application with the Victims of Crime Program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(c) The director shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the State Board of Control pursuant to subdivision (a) or (b). The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(d) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) of Section 1202.4, the Director of Corrections may collect from the parolee any moneys owing on the restitution fine amount, unless prohibited by federal law, and shall transfer that amount to the State Board of Control for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(e) In any case in which a parolee owes a restitution fine, subject to an order, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or paragraph (3) of subdivision (a) of Section 1202.4, the Director of Corrections may collect from the parolee any moneys owing, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the State Board of Control for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. No deductions shall be made on behalf of victims who have not filed an application with the Victims of Crime Program. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(f) The director may deduct and retain from any moneys collected from parolees an administrative fee that totals 10 percent of any amount transferred to the State Board of Control pursuant to subdivision (d) or (e), unless prohibited by federal law. The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(g) When a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections shall collect the restitution order first pursuant to subdivision (b).

(h) When a parolee has both a restitution fine and order from the sentencing court, the Department of Corrections may collect the restitution order first, pursuant to subdivision (e).

(i) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars ($50) for visits that include the inmate and one visitor, seventy dollars ($70) for visits that include the inmate and two or three visitors, and eighty dollars ($80) for visits that include the inmate and four or more visitors.

SEC. 4.5. Section 11413 of the Penal Code is amended to read:

11413. (a) Any person who explodes, ignites, or attempts to explode or ignite any destructive device or any explosive, or who commits arson, in or about any of the places listed in subdivision (b), for the purpose of terrorizing another or in reckless disregard of terrorizing another is guilty of a felony, and shall be punished by imprisonment in the state prison for three, five, or seven years, and a fine not exceeding ten thousand dollars ($10,000).

(b) Subdivision (a) applies to the following places:

(1) Any health facility licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, or any place where medical care is provided by a licensed health care professional.

(2) Any church, temple, synagogue, or other place of worship.

(3) The buildings, offices, and meeting sites of organizations that counsel for or against abortion or among whose major activities are lobbying, publicizing, or organizing with respect to public or private issues relating to abortion.

(4) Any place at which a lecture, film-showing, or other private meeting or presentation that educates or propagates with respect to

abortion practices or policies, whether on private property or at a meeting site authorized for specific use by a private group on public property, is taking place.

(5) Any bookstore or public or private library.

(6) Any building or facility designated as a courthouse.

(7) The home or office of a judicial officer.

(8) Any building or facility regularly occupied by county probation department personnel in which the employees perform official duties of the probation department.

(9) Any private property, if the property was targeted because of the race, color, religion, ancestry, national origin, disability, gender, or sexual orientation of the owner or occupant of the property.

(c) As used in this section, "judicial officer" means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities, of any state or federal court located in this state.

(d) As used in this section, "terrorizing" means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs that may be incurred by a local agency or school district because 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, notwithstanding Section 17610 of the Government Code, 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 877

An act to amend Sections 25020.5, 25022.8, 25023.2, 25023.8, 25024, 25027, 25027.5, 25041, 25055, 25061, 25062.5, 25063, 25080, 25081, 25088, 25090, and 25090.5 of, and to add Sections 25021.9, 25025.9, 25030.5, 25070.4, and 25090.6 to, the Health and Safety Code, and to add

Section 21084.2 to the Public Resources Code, relating to medical waste.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 25020.5 of the Health and Safety Code is amended to read:

25020.5. "Biohazardous waste" means any of the following:

(a) Laboratory waste, including, but not limited to, all of the following:

(1) Human or animal specimen cultures from medical and pathology laboratories.

(2) Cultures and stocks of infectious agents from research and industrial laboratories.

(3) Wastes from the production of bacteria, viruses, spores, discarded live and attenuated vaccines used in human health care or research, discarded animal vaccines, including Brucellosis and Contagious Ecthyma, as identified by the department, and culture dishes and devices used to transfer, inoculate, and mix cultures.

(b) Human surgery specimens or tissues removed at surgery or autopsy, which are suspected by the attending physician and surgeon or dentist of being contaminated with infectious agents known to be contagious to humans.

(c) Animal parts, tissues, fluids, or carcasses suspected by the attending veterinarian of being contaminated with infectious agents known to be contagious to humans.

(d) Waste, which at the point of transport from the generator's site, at the point of disposal, or thereafter, contains recognizable fluid blood, fluid blood products, containers or equipment containing blood that is fluid, or blood from animals known to be infected with diseases which are highly communicable to humans.

(e) Waste containing discarded materials contaminated with excretion, exudate, or secretions from humans or animals that are required to be isolated by the infection control staff, the attending physician and surgeon, the attending veterinarian, or the local health officer, to protect others from highly communicable diseases or diseases of animals that are highly communicable to humans.

(f) (1) Waste which is hazardous only because it is comprised of human surgery specimens or tissues which have been fixed in formaldehyde or other fixatives, or only because the waste is contaminated through contact with, or having previously contained, chemotherapeutic agents, including, but not limited to, gloves, disposable gowns, towels, and intravenous solution bags and attached tubing which are empty. A biohazardous waste which meets the

conditions of this paragraph is not subject to Chapter 6.5 (commencing with Section 25100).

(2) For purposes of this subdivision, "chemotherapeutic agent" means an agent that kills or prevents the reproduction of malignant cells.

(3) For purposes of this subdivision, a container, or inner liner removed from a container, which previously contained a chemotherapeutic agent, is empty if the container or inner liner removed from the container has been emptied by the generator as much as possible, using methods commonly employed to remove waste or material from containers or liners, so that the following conditions are met:

(A) If the material which the container or inner liner held is pourable, no material can be poured or drained from the container or inner liner when held in any orientation, including, but not limited to, when tilted or inverted.

(B) If the material which the container or inner liner held is not pourable, no material or waste remains in the container or inner liner that can feasibly be removed by scraping.

SEC. 2. Section 25021.9 is added to the Health and Safety Code, to read:

25021.9. "Health care professional" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act, as set forth in Chapter 8 (commencing with Section 3600) of Division 2 of the Business and Professions Code, or pursuant to the Chiropractic Initiative Act, as set forth in Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code; and any person certified pursuant to Division 2.5 (commencing with Section 1797).

SEC. 3. Section 25022.8 of the Health and Safety Code is amended to read:

25022.8. "Large quantity generator" means a medical waste generator that generates 200 or more pounds of medical waste in any month of a 12-month period.

SEC. 4. Section 25023.2 of the Health and Safety Code is amended to read:

25023.2. (a) "Medical waste" means waste which meets both of the following requirements:

(1) The waste is composed of waste which is generated or produced as a result of any of the following actions:

(A) Diagnosis, treatment, or immunization of human beings or animals.

(B) Research pertaining to the activities specified in subparagraph (A).

(C) The production or testing of biologicals.

(D) The accumulation of properly contained home-generated sharps waste that is brought by a patient, a member of his or her

family, or by a person authorized by the enforcement agency, to a point of consolidation approved by the enforcement agency pursuant to Section 25030.5 or authorized pursuant to Section 25070.4.

(2) The waste is any of the following:

(A) Biohazardous waste.

(B) Sharps waste.

(b) For purposes of this section, "biologicals" means medicinal preparations made from living organisms and their products, including, but not limited to, serums, vaccines, antigens, and antitoxins.

SEC. 5. Section 25023.8 of the Health and Safety Code is amended to read:

25023.8. Medical waste does not include any of the following:

(a) Waste generated in food processing or biotechnology that does not contain an infectious agent pursuant to Section 25022.5.

(b) Waste generated in biotechnology that does not contain human blood or blood products or animal blood or blood products suspected of being contaminated with infectious agents known to be communicable to humans.

(c) Urine, feces, saliva, sputum, nasal secretions, sweat, tears, and vomitus, unless they contain fluid blood, except as defined in subdivision (e) of Section 25020.5.

(d) Waste which is not biohazardous, such as paper towels, paper products, articles containing nonfluid blood, and other medical solid waste products commonly found in the facilities of medical waste generators.

(e) Hazardous waste, radioactive waste, or household waste.

(f) Waste generated from normal and legal veterinarian, agricultural, and animal livestock management practices on a farm or ranch.

SEC. 6. Section 25024 of the Health and Safety Code is amended to read:

25024. "Medical waste generator" means any person, whose act or process produces medical waste and includes, but is not limited to, a provider of health care as defined in subdivision (d) of Section 56.05 of the Civil Code. All of the following are examples of businesses which generate medical waste:

(a) Medical and dental offices, clinics, hospitals, surgery centers, laboratories, research laboratories, unlicensed health facilities, those facilities required to be licensed pursuant to Division 2 (commencing with Section 1200), chronic dialysis clinics, as regulated pursuant to Division 2 (commencing with Section 1200), and education and research facilities.

(b) Veterinary offices, veterinary clinics, and veterinary hospitals.

(c) Pet shops.

SEC. 7. Section 25025.9 is added to the Health and Safety Code, to read:

25025.9. "Parent organization" means an organization that employs or contracts with health care professionals who provide health care services at a location other than at a health care facility specified in subdivision (a) of Section 25024.

SEC. 8. Section 25027 of the Health and Safety Code is amended to read:

25027. "Storage" means the holding of medical wastes, in accordance with Article 8 (commencing with Section 25080), at a designated accumulation area, offsite point of consolidation, transfer station, other registered facility, or in a vehicle detached from its means of locomotion.

SEC. 9. Section 25027.5 of the Health and Safety Code is amended to read:

25027.5. "Transfer station" means any offsite location where medical waste is loaded, unloaded, stored, or consolidated by a registered hazardous waste hauler, or a holder of a limited quantity hauling exemption granted pursuant to Section 25061, during the normal course of transportation of the medical waste. "Transfer station" does not include any onsite facility, including, but not limited to, common storage facilities, facilities of medical waste generators employed for the purpose of consolidation, or onsite treatment facilities.

SEC. 10. Section 25030.5 is added to the Health and Safety Code, to read:

25030.5. (a) In addition to the consolidation points authorized pursuant to Section 25070.4, the enforcement agency may approve a location as a point of consolidation for the collection of home-generated sharps waste, which, after collection, shall be transported and treated as medical waste.

(b) A consolidation location approved pursuant to this section shall be known as a "home-generated sharps consolidation point."

(c) A home-generated sharps consolidation point is not subject to the requirements of Article 8 (commencing with Section 25080), to the permit or registration requirements of this division, or to any permit or registration fees, with regard to the activity of consolidating home-generated sharps waste pursuant to this section.

(d) A home-generated sharps consolidation point shall comply with all of the following requirements:

(1) All sharps waste shall be placed in sharps containers.

(2) Sharps containers ready for disposal shall not be held for more than seven days without the written approval of the enforcement agency.

(e) An operator of a home-generated sharps consolidation point approved pursuant to this section shall not be considered the generator of that waste.

(f) The medical waste treatment facility which treats the sharps waste subject to this section shall maintain the tracking documents

required by Sections 25063 and 25073 with regard to that sharps waste.

SEC. 11. Section 25041 of the Health and Safety Code is amended to read:

25041. Small quantity generators that treat waste onsite, pursuant to subdivision (a) of Section 25040, shall register with the enforcement agency prior to the commencement of treatment.

SEC. 12. Section 25055 of the Health and Safety Code is amended to read:

25055. A medical waste generator required to register pursuant to this article shall maintain individual treatment, and tracking records, if medical waste is removed from the generator's site for treatment, for three years or for the period specified in the regulations.

SEC. 13. Section 25061 of the Health and Safety Code is amended to read:

25061. (a) A medical waste generator or parent organization that employs health care professionals who generate medical waste may apply to the enforcement agency for a limited-quantity hauling exemption, if the generator or health care professional meets all of the following requirements:

(1) The generator or health care professional generates less than 20 pounds of medical waste per week, transports less than 20 pounds of medical waste at any one time, and the generator or parent organization has on file one of the following:

(A) If the generator or parent organization is a small quantity generator required to register pursuant to Article 4 (commencing with Section 25040), a medical waste management plan prepared pursuant to Section 25042.

(B) If the generator or parent organization is a small quantity generator not required to register pursuant to Article 4 (commencing with Section 25040), the information document maintained pursuant to subdivision (a) of Section 25045.1.

(C) If the parent organization is a large quantity generator, a medical waste management plan prepared pursuant to Section 25052.

(2) The generator or health care professional who generated medical waste transports the medical waste himself or herself, or directs a member of his or her staff to transport the waste, to a permitted medical waste treatment facility, a transfer station, a parent organization, or another health care facility for the purpose of consolidation before treatment and disposal.

(3) Except as provided in paragraph (4), the generator maintains a tracking document, as specified in Section 25063.

(4) (A) Notwithstanding paragraph (3), if a health care professional who generates medical waste returns the medical waste to the parent organization, a single-page form or multiple entry log

may be substituted for the tracking document, if the form or log contains all of the following information:

(i) The name of the person transporting the medical waste.

(ii) The number of containers and type of medical waste. This subparagraph does not require any generator to maintain a separate medical waste container for every patient or to maintain records as to the specified source of the medical waste in any container.

(iii) The date that the medical waste was returned.

(B) This paragraph does not prohibit the use of a single document to verify the return of more than one container over a period of time, if the form or log is maintained in the files of the parent organization once the page is completed.

(b) The limited-quantity hauling exemption authorized by this section is valid for a period of one year.

(c) An application for an initial or a renewal of a limited-quantity hauling exemption shall be accompanied by a fee of twenty-five dollars ($25). The application shall identify each person who will transport medical waste for the transporter. If the generator or parent organization identifies more than four persons who will be transporting medical waste, the generator or parent organization shall pay an additional fee of five dollars ($5) for each person, up to a maximum additional fee of twenty-five dollars ($25).

SEC. 14. Section 25062.5 of the Health and Safety Code is amended to read:

25062.5. For the purpose of transferring medical waste prior to reaching a permitted medical waste treatment facility, medical waste shall not be unloaded, reloaded, or transferred to another vehicle at any location, except at a permitted medical waste transfer station or in the case of a vehicle breakdown or other emergency.

SEC. 15. Section 25063 of the Health and Safety Code is amended to read:

25063. (a) Except with regard to sharps waste consolidated by a home-generated sharps consolidation point approved pursuant to Section 25030.5, a hazardous waste transporter or generator transporting medical waste shall maintain a completed tracking document of all medical waste removed for treatment or disposal. A hazardous waste transporter or generator who transports medical waste to a facility, other than the final medical waste treatment facility, shall also maintain tracking documents which show the name, address, and telephone number of the medical waste generator, for purposes of tracking the generator of medical waste when the waste is transported to the final medical waste treatment facility. At the time the medical waste is received by a hazardous waste transporter, the transporter shall provide the medical waste generator with a copy of the tracking document for the generator's medical waste records. The transporter or generator transporting medical waste shall maintain its copy of the tracking document for three years.

(b) The tracking document shall include, but not be limited to, all of the following information:

(1) The name, address, telephone number, and registration number of the transporter, unless transported pursuant to Section 25061.

(2) The type and quantity of medical waste transported.

(3) The name, address, and telephone number of the generator.

(4) The name, address, telephone number, permit number, and the signature of an authorized representative of the permitted facility receiving the waste.

(5) The date that the medical waste is collected or removed from the generator's facility, the date that the medical waste is received by the transfer station, the registered large quantity generator, or point of consolidation, if applicable, and the date that the medical waste is received by the treatment facility.

(c) Any hazardous waste transporter or generator transporting medical waste in a vehicle shall have a tracking document in his or her possession while transporting the waste. The tracking document shall be shown upon demand to any enforcement agency personnel or an officer of the Department of the California Highway Patrol. If the waste is transported by rail, vessel, or air, the railroad corporation, vessel operator, or airline shall enter on the shipping papers any information concerning the waste which the enforcement agency may require.

(d) A hazardous waste transporter or a generator transporting medical waste shall provide the facility receiving the medical waste with the original tracking document.

(e) Each hazardous waste transporter and each medical waste treatment facility shall provide tracking data periodically and in a format as determined by the department.

(f) Medical waste transported out of state shall be consigned to a permitted medical waste treatment facility in the receiving state. If there is no permitted treatment facility in the receiving state or if the medical waste is crossing an international border, the waste shall be treated in accordance with Article 9 (commencing with Section 25090) prior to being transported out of the state.

SEC. 16. Section 25070.4 is added to the Health and Safety Code, to read:

25070.4. Notwithstanding any other provision of this chapter, a registered medical waste generator, which is a facility specified in subdivisions (a) and (b) of Section 25024, may accept home-generated sharps waste, to be consolidated with the facility's medical waste stream, subject to all of the following conditions:

(a) The generator of the sharps waste, a member of the generator's family, or a person authorized by the enforcement agency transports the sharps waste to the medical waste generator's facility.

(b) The sharps waste is accepted at a central location at the medical waste generator's facility.

(c) A reference to, and a description of, the actions taken pursuant to this section are included in the facility's medical waste management plan adopted pursuant to Section 25052.

SEC. 17. Section 25080 of the Health and Safety Code is amended to read:

25080. To containerize or store medical waste, a person shall do all of the following:

(a) Medical waste shall be contained separately from other waste at the point of origin in the producing facility. Sharps containers may be placed in biohazard bags or in containers with biohazard bags.

(b) Biohazardous waste shall be placed in a red biohazard bag conspicuously labeled with the words "Biohazardous Waste" or with the international biohazard symbol and the word "BIOHAZARD."

(c) Sharps waste shall be contained in a sharps container pursuant to Section 25082.

(d) (1) Biohazardous waste, which meets the conditions of subdivision (f) of Section 25020.5 because it is contaminated through contact with, or having previously contained, chemotherapeutic agents, shall be segregated for storage, and, when placed in a secondary container, that container shall be labeled with the words "Chemotherapy Waste", "CHEMO", or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the waste pursuant to Section 25090.6.

(2) Biohazardous waste, which meets the conditions of subdivision (f) of Section 25020.5 because it is comprised of human surgery specimens or tissues which have been fixed in formaldehyde or other fixatives, shall be segregated for storage and, when placed in a secondary container, that container shall be labeled with the words "Pathology Waste", " PATH", or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the waste pursuant to Section 25090.6.

(e) Sharps waste, which meets the conditions of subdivision (f) of Section 25020.5, shall be placed in sharps containers labeled in accordance with the industry standard with the words "Chemotherapy Waste", "Chemo", or other label approved by the department, and segregated to ensure treatment of the waste pursuant to Section 25090.6.

(f) Biohazardous waste, which are recognizable human anatomical parts, as specified in Section 25090.5, shall be segregated for storage and, when placed in a secondary container for treatment as pathology waste, that container shall be labeled with the words "Pathology Waste", "PATH", or other label approved by the department on the lid and on the sides, so as to be visible from any

lateral direction, to ensure treatment of the waste pursuant to Section 25090.6.

SEC. 18. Section 25081 of the Health and Safety Code is amended to read:

25081. To containerize biohazard bags, a person shall do all of the following:

(a) The bags shall be tied to prevent leakage or expulsion of contents during all future storage, handling, or transport.

(b) Biohazardous waste shall be bagged in accordance with subdivision (b) of Section 25080 and placed for storage, handling, or transport in a rigid container which may be disposable, reusable, or recyclable. Containers shall be leak resistant, have tight-fitting covers, and be kept clean and in good repair. Containers may be recycled with the approval of the enforcement agency. Containers may be of any color and shall be labeled with the words "Biohazardous Waste" or with the international biohazard symbol and the word "BIOHAZARD" on the lid and on the sides so as to be visible from any lateral direction. Containers meeting the requirements specified in Section 66840 of Title 22 of the California Code of Regulations, as it read on December 31, 1990, may also be used until the replacement of the containers is necessary or existing stock has been depleted.

(c) Biohazardous waste shall not be removed from the biohazard bag until treatment as prescribed in Article 9 (commencing with Section 25090) is completed, except to eliminate a safety hazard, or by the enforcement officer in performance of an investigation pursuant to Section 25034.3. Biohazardous waste shall not be disposed of before being treated as prescribed in that Article 9.

(d) (1) Except as provided in paragraph (5), a person generating biohazardous waste shall comply with the following requirements:

(A) If the person generates 20 or more pounds of biohazardous waste per month, the person shall not contain or store biohazardous or sharps waste above 0° Centigrade (32° Fahrenheit) at any onsite location for more than seven days without obtaining prior written approval of the enforcement agency.

(B) If a person generates less than 20 pounds of biohazardous waste per month, the person shall not contain or store biohazardous waste above 0° Centigrade (32° Fahrenheit) at any onsite location for more than 30 days.

(2) A person may store biohazardous or sharps waste at or below 0° Centigrade (32° Fahrenheit) at an onsite location for not more than 90 days without obtaining prior written approval of the enforcement agency.

(3) A person may store biohazardous or sharps waste at a permitted transfer station at or below 0° Centigrade (32° Fahrenheit) for not more than 30 days without obtaining prior written approval of the enforcement agency.

(4) A person shall not store biohazardous or sharps waste above 0° Centigrade (32° Fahrenheit) at any location or facility which is offsite from the generator for more than seven days before treatment.

(5) Notwithstanding paragraphs (1) to (4), inclusive, if the odor from biohazardous or sharps waste stored at a facility poses a nuisance, the enforcement agency may require more frequent removal.

SEC. 19. Section 25088 of the Health and Safety Code is amended to read:

25088. (a) Except as provided in subdivision (b), compactors or grinders shall not be used to process medical waste until after the waste has been treated pursuant to Article 9 (commencing with Section 25090) and rendered solid waste.

(b) (1) Grinding or compacting may be used when it is an integral part of an alternative treatment method, approved by the department.

(2) A compactor may be used to compact medical waste if the type of medical waste compactor proposed to be used is evaluated by the department, and approved by the department prior to its use pursuant to the following criteria:

(A) The compactor operates without the release of liquids or pathogenic microorganisms from the medical waste during placement of medical waste into, or removal from, the compactor units, and during the compaction process.

(B) The compacted medical waste will not release liquids or pathogens during any subsequent handling and no residual waste will be left in the compactor unit after the process is completed.

(C) Compactor operations and maintenance personnel will not be at any substantial increased risk of exposure to pathogens.

(D) The compactor has been demonstrated not to have any adverse effects on any treatment method. If only specific treatment methods are compatible with the compaction process, the department shall condition its approval of the compactor for use only in conjunction with treatment methods for which no adverse effects have been demonstrated.

(c) Medical waste in bags or other containers shall not be subject to compaction by any compacting device and shall not be placed for storage or transport in a portable or mobile trash compactor, except as allowed pursuant to subdivision (b).

SEC. 20. Section 25090 of the Health and Safety Code is amended to read:

25090. A person generating or treating medical waste shall ensure that the medical waste is treated by one of the following methods, thereby rendering it solid waste, as defined in Section 40191 of the Public Resources Code, prior to disposal:

(a) (1) Incineration at a permitted medical waste treatment facility in a controlled-air, multichamber incinerator, or other method of incineration approved by the department which provides

complete combustion of the waste into carbonized or mineralized ash.

(2) Treatment with an alternative technology approved pursuant to subdivision (d), which, due to the extremely high temperatures of treatment in excess of 1300 degrees Fahrenheit, has received express approval by the department.

(b) (1) Discharge to a public sewage system if the medical waste is liquid or semiliquid, and not either of the following:

(A) Liquid or semiliquid laboratory waste, as defined in subdivision (a) of Section 25020.5.

(B) Microbiological specimens, including those specified in subdivision (b) of Section 25020.5.

(2) Medical waste discharge shall be consistent with the waste discharge requirements placed on the public sewer system by the California regional water quality control board with jurisdiction.

(c) Steam sterilization at a permitted medical waste treatment facility or by other sterilization, in accordance with all of the following operating procedures for steam sterilizers or other sterilization:

(1) Standard written operating procedures shall be established for biological indicators, or for other indicators of adequate sterilization approved by the department, for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure on container, pattern of loading, water content, and maximum load quantity.

(2) Recording or indicating thermometers shall be checked during each complete cycle to ensure the attainment of 121° Centigrade (250° Fahrenheit) for at least one-half hour, depending on the quantity and density of the load, in order to achieve sterilization of the entire load. Thermometers shall be checked for calibration annually. Records of the calibration checks shall be maintained as part of the facility's files and records for a period of three years or for the period specified in the regulations.

(3) Heat-sensitive tape, or another method acceptable to the enforcement agency, shall be used on each biohazard bag or sharps container that is processed onsite to indicate the attainment of adequate sterilization conditions.

(4) The biological indicator Bacillus stearothermophilus, or other indicator of adequate sterilization as approved by the department, shall be placed at the center of a load processed under standard operating conditions at least monthly to confirm the attainment of adequate sterilization conditions.

(5) Records of the procedures specified in paragraphs (1), (2), and (4) shall be maintained for a period of not less than three years.

(d) (1) Other alternative medical waste treatment methods which are both of the following:

(A) Approved by the department.

(B) Result in the destruction of pathogenic micro-organisms.

(2) Any alternative medical waste treatment method proposed to the department shall be evaluated by the department and either approved or rejected pursuant to the criteria specified in this subdivision.

SEC. 21. Section 25090.5 of the Health and Safety Code is amended to read:

25090.5. Recognizable human anatomical parts, with the exception of teeth not deemed infectious by the attending physician and surgeon or dentist shall be disposed of by interment or in accordance with subdivision (a) of Section 25090, unless otherwise hazardous.

SEC. 22. Section 25090.6 is added to the Health and Safety Code, to read:

25090.6. Biohazardous waste that meets the conditions of subdivision (f) of Section 25020.5 shall be treated pursuant to subdivision (a) of Section 25090 prior to disposal.

SEC. 23. Section 21084.2 is added to the Public Resources Code, to read:

21084.2. The Office of Planning and Research shall, at the next revision of the California Environmental Quality Act Guidelines (Chapter 3 (commencing with Section 15000) of Division 6 of Title 14 of the California Code of Regulations) which takes place after January 1, 1996, pursuant to Section 21087, recommend changes to those guidelines that would determine if Sections 15301, 15302, and 15304 of Title 14 of the California Code of Regulations apply to the treatment of medical waste by steam sterilization. If the office determines that those provisions of the guidelines apply, consistent with existing law, to that treatment, the office shall recommend clarifying revisions to the guidelines to expressly state that the treatment is subject to a categorical exemption under those provisions of the guidelines. If the office determines that those provisions of the guidelines do not categorically exempt that treatment, and if such an exemption is consistent with existing law, the office shall recommend a categorical exemption for the treatment in its recommended revision of the guidelines.

SEC. 24. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 878

An act to add Chapter 5.7 (commencing with Section 13397) to Division 7 of the Water Code, relating to water.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Chapter 5.7 (commencing with Section 13397) is added to Division 7 of the Water Code, to read:

CHAPTER 5.7. DRAINAGE FROM ABANDONED MINES

13397. (a) The Legislature finds and declares all of the following:

(1) Thousands of abandoned mines have been identified in this state. Waste, including acid rock drainage from abandoned mines, has a devastating effect on aquatic life and has degraded some major water bodies in the state. Abandoned mines are the overwhelming source of copper loading to the Sacramento River and the San Francisco Bay/Sacramento-San Joaquin Delta. In some instances, waste from abandoned mines can cause public health and safety problems.

(2) The formation of acid rock drainage is a process that can continue for centuries after the abandonment of a mine and is difficult to control. The complete elimination of acid rock drainage is not possible at this time.

(3) Unless action is taken either by public agencies or private parties, who are not responsible for creating the waste, abandoned mines will continue to discharge waste indefinitely. The cleanup of this waste for the protection of the public and the waterways of the state should be facilitated by limiting the financial responsibility for that cleanup.

(4) Public agencies and private parties, who are not otherwise legally responsible for the abandoned mined land, are reluctant to remediate abandoned mined lands unless they are assured that they will be held responsible for completing only the remedial work that they undertake. The public agencies and private parties may be willing to implement partial remediation but they do not have sufficient resources to pay the cost of meeting all applicable regulatory standards.

(b) The Legislature further finds and declares that it is the policy of the state to establish a program that permits public agencies and

cooperating private parties to reduce the threat to water quality caused by abandoned mined lands without becoming responsible for completely remediating abandoned mine waste to a point that meets water quality objectives and related regulatory requirements. This program should provide a streamlined process for the purpose of approving an abandoned mine remediation plan in lieu of certain state permits and requirements. The implementation of this program will foster projects to improve water quality while ensuring that the taxpayers are not unfairly burdened.

13397.5. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Abandoned mine waste" means the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property on, or discharging from, abandoned mined lands, directly resulting from, or displaced by, surface mining operations.

(b) "Abandoned mined lands" has the same meaning as "abandoned surface mined area," as defined in clause (ii) of subparagraph (A) of paragraph (2) of subdivision (b) of Section 2796 of the Public Resources Code.

(c) "Acid rock drainage" means acid waste discharge that results from the oxidation of metal sulfide in minerals associated with mined lands.

(d) "Mined lands" has the same meaning as set forth in Section 2729 of the Public Resources Code.

(e) "Oversight agency" means either the state board or a regional board. If the remediating agency is a regional board, the state board shall be the oversight agency. If the remediating agency is the state board, the oversight agency shall be the Site Designation Committee established pursuant to Section 25261 of the Health and Safety Code. The committee shall have the powers and functions specified in Chapter 6.65 (commencing with Section 25260) of Division 20 of the Health and Safety Code, except that neither the chairperson of the state board, nor any designee, shall participate in the actions of the committee relating to the state board as a remediating agency.

(f) "Remediating agency" or "agency" means any public agency, or any private individual or entity acting under a cooperative agreement with a public agency, that prepares and submits a remediation plan in accordance with this chapter. "Remediating agency" includes, but is not limited to, a public agency that holds title to abandoned mined lands for the purpose of remediating those lands or that is engaging in remediation activities incidental to the ownership of the lands for other than mining purposes. "Remediating agency" does not include any person or entity that is not a public agency, that, before implementing an approved remediation plan, had a direct financial interest in, or participated in, any mining operation, including exploration, associated with the abandoned mined lands being remediated.

(g) "Remediation plan" means a plan to improve the quality of the waters of the state that have been directly and adversely impacted by abandoned mine waste.

13398. (a) Notwithstanding any other provision of law, a remediating agency that has implemented an approved remediation plan, or a public agency that is effecting reclamation of a mine site pursuant to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), shall not be deemed, based on the actions taken to implement the remediation plan or the reclamation, to be the owner or operator of the abandoned mined lands, or any structure, improvement, waste management unit, or facility on the abandoned mined lands, and shall not be deemed, based on the actions taken to implement the remediation plan or the reclamation, to be responsible for any discharge, or the results of any discharge, of abandoned mine waste on or from any abandoned mined lands, including discharges which have been affected by the activities of the remediating agency or the public agency effecting reclamation of a mine site.

(b) Except as provided in paragraph (c), Chapter 5.5 (commencing with Section 13370), and Section 13398.9, the responsibilities of a remediating agency are limited to the following:

(1) Submitting a remediation plan to the oversight agency for approval in accordance with Section 13398.3. A remediation plan may be submitted in connection with a remediation project that was commenced or completed prior to January 1, 1996.

(2) Implementing a remediation plan that has been approved by the oversight agency.

(3) If required by a remediation plan approved by the oversight agency, maintaining any structure, waste management unit, improvement, or other facility constructed, improved, or placed on the abandoned mined lands.

(4) Periodically monitoring and reporting as required by the oversight agency.

(5) (A) Determining if the remediation plan implemented by the remediating agency has been effective to provide a substantial improvement in water quality affected by abandoned mine waste.

(B) If the remediating agency determines that the remediation plan implemented by the agency is not effective, the remediating agency shall promptly report that determination to the oversight agency. If the remediating agency or the oversight agency determines that the remediation plan implemented by the remediating agency is not effective, the remediating agency shall submit a modified remediation plan to the oversight agency which includes a proposal to improve the plan to make it effective, or a proposal to cease remedial activities on the abandoned mined lands and return those lands, including the water quality on those lands, to a condition that approximates the quality that existed prior to

commencing remedial activities. The remediating agency shall implement the modified remediation plan as approved by the oversight agency.

(6) Notwithstanding any other provision of law, except as provided in Chapter 5.5 (commencing with Section 13370), if the remediating agency implements or has implemented the approved remediation plan and any modifications to the plan approved by the oversight agency, the remediating agency, with regard to any discharge of abandoned mine waste that is the subject of the plan, shall not be required to achieve water quality objectives or to comply with other requirements of this division or other laws that are administered by the state board or the regional boards, and shall not be subject to any enforcement actions pursuant to state law based on actions taken to implement the approved remediation plan, except for violations involving gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the remediating agency.

(c) The responsibilities of a remediating agency that engages in surface mining operations, as defined in Section 2735 of the Public Resources Code, in conjunction with the remediation or reclamation of abandoned mine waste or that performs reclamation of a surface mining operation pursuant to Section 2773.1 or 2796 of the Public Resources Code, include performing the applicable requirements of Section 2207 of the Public Resources Code and the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code). The State Mining and Geology Board may grant an exemption from the requirements of Section 2207 of the Public Resources Code or from the Surface Mining and Reclamation Act of 1975 to a remediating agency and its contractors solely for the purpose of removing abandoned mine waste in connection with the implementation of an approved remediation plan.

13398.3. The remediation plan to be submitted by a remediating agency to the oversight agency shall include all of the following:

(a) Identification of the remediating agency, and a certification that the remediating agency is a remediating agency as defined in this chapter.

(b) Identification of the abandoned mined lands that are the subject of the plan.

(c) Identification of the waters of the state, if any, that are affected by the abandoned mined lands.

(d) A description of the physical conditions at the abandoned mined lands that are causing or have caused adverse water quality impacts.

(e) A description of the practices, including system design and construction plans, and operation and maintenance plans, proposed to reduce, control, mitigate, or eliminate the adverse water quality impacts and a schedule for implementing those practices. If the plan

is prepared for an existing remediation project, the remediation plan shall include a description of practices that have been implemented and the practices that are proposed to improve the existing project, if any.

(f) An analysis demonstrating that the implementation of the practices described in the plan have caused, or are expected to cause, a substantial improvement in water quality for the identified waters.

(g) A description of monitoring or other assessment activities to be undertaken to evaluate the success of the implemented practices during and after implementation, including an assessment of baseline conditions.

(h) A budget and identified funding to pay for the implementation of the plan.

(i) Remediation goals and objectives.

(j) Contingency plans.

(k) A description of the remediating agency's legal right to enter and conduct remedial activities.

(*l*) The signature of an authorized representative of the remediating agency.

(m) Identification of the pollutants to be addressed by the plan.

13398.5. The oversight agency shall do all of the following:

(a) Comply with the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) in connection with the review of any remediation plan.

(b) Provide an opportunity for public review of, and comment with regard to, the remediation plan.

(c) Disapprove, approve, or modify and approve a remediation plan at a public meeting.

13398.7. (a) The oversight agency may approve the remediation plan if the oversight agency finds that there is substantial evidence in the record that the plan will substantially improve water quality affected by abandoned mine waste.

(b) The oversight agency may approve a remediation plan for a project that the remediating agency implemented prior to January 1, 1996, if that oversight agency finds that there is substantial evidence in the record that the project has substantially improved water quality adversely impacted by mining activities on the abandoned mined lands undertaken before the project was implemented.

(c) The remediating agency is not required to include in the remediation plan a plan to achieve water quality objectives, with regard to any discharge of abandoned mine waste that is the subject of the plan, to comply with other requirements of this division, except for Chapter 5.5 (commencing with Section 13370), or to comply with any other law that is administered by the state board or the regional boards, with regard to that discharge.

(d) The oversight agency may approve a modification of an approved remediation plan to permit additional time for completing the remediation project or to otherwise modify the plan, after an opportunity for public comment.

(e) If the oversight agency determines that a remediating agency is not implementing the approved remediation plan in substantial compliance with its terms, that oversight agency shall notify the remediating agency of its determination, including the specific causes for that determination.

(f) If the oversight agency determines that the specific causes for the determination are not adequately addressed pursuant to subdivision (e), or if a compliance plan is not submitted to, and approved by, the oversight agency within 180 days from the date of the notification pursuant to subdivision (e), the oversight agency may determine that the remediating agency is in violation of this chapter. A remediating agency that is in violation of this chapter is not protected by the limitations on responsibility for remediation of abandoned mined lands provided by this chapter and may be subject to any enforcement action authorized by law.

13398.9. (a) This chapter has no effect on the tort liability of a remediating agency for personal injury or wrongful death.

(b) This chapter has no effect on the liability of a remediating agency based upon activities other than those undertaken in connection with the implementation of an approved remediation plan.

(c) This chapter has no effect on the liability of a remediating agency if that agency, following implementation of an approved remediation plan, benefits from, or participates in, any mining operation, including exploration, associated with the abandoned mined lands subject to the approved remediation plan.

(d) For the purposes of this chapter, the remediation plan for the Penn Mine property located in Calaveras County shall, if a memorandum of understanding is entered into by the state and other appropriate parties, include the terms and conditions set forth in that memorandum of understanding.

CHAPTER 879

An act to amend Sections 7054, 7056, and 35107 of, to add Sections 7054.1 and 7058 to, and to repeal Sections 35174 and 72632 of, the Education Code, relating to schools.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. (a) The Legislature hereby finds and declares that, in a democratic society, the use of public funds in election campaigns is unjustified and inappropriate. No public entity should presume to use money derived from the whole of taxpayers to support or oppose ballot measures or candidates.

(b) However, it is not the intent of the Legislature, in enacting this act, to restrict the political activities of officers or employees of a school district or community college district except as provided in Article 2 (commencing with Section 7050) of Chapter 1 of Part 5 of the Education Code or as may be necessary to meet specified requirements of federal law. It is further not the intent of the Legislature, in enacting this act, to prohibit the ability of a governing board of a school district or a community college district or a member of either of those boards from preparing or disseminating information or making public or private appearances or statements for the purpose of urging the support or defeat of any ballot measure or candidate of the appropriate district by means of, or in circumstances that do not involve the use of, public funds. If no public funds are used, the governing board of a school district or a community college district would be authorized to prepare or disseminate information or make public or private appearances or statements for the purpose of urging the support or defeat of any ballot measure or candidate. The right of speech of any member of a governing board of a school district or community college district or any employee thereof is in no manner affected by this act.

SEC. 2. Section 7054 of the Education Code is amended to read:

7054. (a) No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

(b) Nothing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met:

(1) The informational activities are otherwise authorized by the Constitution or laws of this state.

(2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(c) A violation of this section shall be a misdemeanor or felony punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both, or imprisonment in a state prison for 16 months, or two or three years.

SEC. 3. Section 7054.1 is added to the Education Code, to read:

7054.1. Nothing in this article shall be construed as prohibiting any administrative officer or board member of a school district or community college district from appearing at any time before a citizens' group that requests the appearance of the officer or board member for purposes of discussing the reasons why the governing board of the district called an election to submit to the voters of the district a proposition for the issuance of bonds and for purposes of responding to inquiries from the citizens' group.

SEC. 4. Section 7056 of the Education Code is amended to read:

7056. (a) Nothing in this article prevents an officer or employee of a local agency from soliciting or receiving political funds or contributions to promote the support or defeat a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of the local agency. These activities are prohibited during working hours. In addition, entry into buildings and grounds under the control of a local agency for such purposes during working hours is also prohibited.

(b) Nothing in this section shall be construed to prohibit any recognized employee organization or its officers, agents, and representatives from soliciting or receiving political funds or contributions from employee members to promote the support or defeat of any ballot measure on school district property or community college district property during nonworking time. As used in this subdivision, "nonworking time" means time outside an employee's working hours, whether before or after school or during the employee's luncheon period or other scheduled work intermittency during the schoolday.

SEC. 5. Section 7058 is added to the Education Code, to read:

7058. Nothing in this article shall prohibit the use of a forum under the control of the governing board of a school district or community college district if the forum is made available to all sides on an equitable basis.

SEC. 6. Section 35107 of the Education Code is amended to read:

35107. (a) Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a school district without further qualifications.

(b) (1) An employee of a school district may not be sworn into office as an elected or appointed member of that school district's governing board unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office.

(2) For any individual who is an employee of a school district and an elected or appointed member of that school district's governing board prior to January 1, 1992, this subdivision shall apply when he

or she is reelected or reappointed, on or after January 1, 1992, as a member of the school district's governing board.

(c) Notwithstanding any other provision of law, the governing board of a school district may adopt or the residents of the school district may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the governing board of the school district may serve on the governing board of the school district. Any proposal to limit the number of terms a member of the governing board of the school district may serve on the governing board of the school district shall apply prospectively only and shall not become operative unless it is submitted to the electors of the school district at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.

(d) (1) An initiative measure proposed pursuant to subdivision (c) shall be subject to the procedures set forth in Chapter 4 (commencing with Section 9300) of Division 9 of the Elections Code.

(2) A proposal submitted to the electors by the governing board pursuant to subdivision (c) shall be subject to the procedures set forth in Chapter 6 (commencing with Section 9500) of Division 9 of the Elections Code.

(e) A member of the governing board of a school district shall abstain from voting on personnel matters that uniquely affect a relative of the member but may vote on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. For purposes of this section, "relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree.

SEC. 7. Section 35174 of the Education Code is repealed.

SEC. 8. Section 72632 of the Education Code is repealed.

SEC. 9. It is the intent of the Legislature, in amending Section 35107 of the Education Code as set forth in Section 6, to make only those changes in Section 35107 made by Chapter 432 of the Statutes of 1995 and proposed by Chapter 22 of the Statutes of 1995.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs that may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 880

An act to amend Section 10605 of the Health and Safety Code, and to amend Section 18966 of the Welfare and Institutions Code, relating to children.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 10605 of the Health and Safety Code is amended to read:

10605. (a) A fee of three dollars ($3) shall be paid by the applicant for a certified copy of a fetal death or death record.

(b) (1) A fee of three dollars ($3) shall be paid by a public agency or licensed private adoption agency applicant for a certified copy of a birth certificate that the agency is required to obtain in the ordinary course of business. A fee of seven dollars ($7) shall be paid by any other applicant for a certified copy of a birth certificate. Four dollars ($4) of any seven dollar ($7) fee is exempt from subdivision (e) and shall be paid either to a county children's trust fund or to the State Children's Trust Fund, in conformity with Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(2) The board of supervisors of any county that has established a county children's trust fund may increase the fee for a certified copy of a birth certificate by up to three dollars ($3) for deposit in the county children's trust fund in conformity with Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(3) (A) As a pilot project, Contra Costa, Los Angeles, Orange, Sacramento, San Diego, Santa Clara, and Tulare Counties may increase the fee for a certified copy of a birth certificate by up to three dollars ($3), through December 31, 1996, for the purpose of providing dependency mediation services in the juvenile court. Public agencies shall be exempt from paying this portion of the fee. However, if a county increases this fee, neither the revenue generated from the fee increase nor the increased expenditures made for these services shall be considered in determining the court's progress towards achieving its cost reduction goals pursuant to Section 68113 of the Government Code if the net effect of the revenue and expenditures is a cost

increase. In each county participating in the pilot project up to 5 percent of the revenue generated from the fee increase may be apportioned to the county recorder for the additional accounting costs of the program.

(B) On or before December 31, 1995, each participating county shall submit an independent study of the project to the Legislature. The study shall consider the effectiveness of mediation, the cost-avoidance realized, what model of juvenile court mediation should be promoted statewide, and at what point mediation is most effective.

(C) The presiding judge of the superior court of each participating county shall designate a person who will facilitate access to case files and any other data necessary for the independent study.

(D) Variables to be evaluated and measured to indicate the success of the pilot projects shall include, but not be limited to:

(i) At least 75 percent of all participants should be satisfied or very satisfied with the dependency mediation process.

(ii) The range of creative solutions for resolution of the families' problems within the development of the court ordered plan shall increase by 10 percent.

(iii) At least 70 percent of matters coming before the court should be settled in less time using dependency mediation than if adjudicated.

(iv) Dependency mediation shall result in a 25 percent reduction in foster care placements.

(c) A fee of three dollars ($3) shall be paid by a public agency applicant for a certified copy of a marriage record, that has been filed with the county recorder or county clerk, that the agency is required to obtain in the ordinary course of business. A fee of six dollars ($6) shall be paid by any other applicant for a certified copy of a marriage record that has been filed with the county recorder or county clerk. Three dollars ($3) of any six-dollar ($6) fee is exempt from subdivision (e) and shall be transmitted monthly by each local registrar, county recorder, and county clerk to the state for deposit into the General Fund as provided by Section 1852 of the Family Code.

(d) A fee of three dollars ($3) shall be paid by a public agency applicant for a certified copy of a marriage dissolution record obtained from the State Registrar that the agency is required to obtain in the ordinary course of business. A fee of six dollars ($6) shall be paid by any other applicant for a certified copy of a marriage dissolution record obtained from the State Registrar.

(e) Each local registrar, county recorder, or county clerk collecting a fee pursuant to this section shall transmit 15 percent of the fee for each certified copy to the State Registrar by the 10th day of the month following the month in which the fee was received.

(f) The additional three dollars ($3) authorized to be charged to applicants other than public agency applicants for certified copies of marriage records by subdivision (c) may be increased pursuant to Section 114.

SEC. 2. Section 18966 of the Welfare and Institutions Code is amended to read:

18966. When a county board of supervisors designates a commission pursuant to Section 18965, the board of supervisors shall establish a county children's trust fund. The children's trust fund shall consist of the fees for birth certificates, collected pursuant to Section 10605 of the Health and Safety Code, grants, gifts, or bequests from private sources to be used for child abuse and neglect prevention and intervention programs, any funds appropriated by local governmental entities to the trust fund, and any funds appropriated to the county for the trust fund by the Legislature. The local registrar or county recorder may, however, retain a percentage, not to exceed 10 percent, of the surcharge collectible pursuant to subdivision (b) of Section 10605 of the Health and Safety Code, in order to defray the costs of collection.

The county treasurer shall transmit moneys collected from birth certificate fees for the county children's trust fund, pursuant to subdivision (b) of Section 10605 of the Health and Safety Code, collected with respect to the birth certificate of a child whose mother was a resident of another county at the time of the birth to the treasurer of the county of the mother's residence at the time of the birth if the county to receive the funds has established a program pursuant to Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code and does not have a licensed health facility that provides maternity services within its jurisdiction.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 881

An act to amend Section 65302 of, and to add Section 65302.2 to, the Government Code, to add Section 21151.9 to the Public Resources Code, and to add Part 2.10 (commencing with Section 10910) to Division 6 of the Water Code, relating to water.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall designate, in a land use category that provides for timber production, those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies which have developed, served, controlled or conserved water for any purpose for the county or city for which the

plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards. Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made

by the division shall be advisory to the planning agency and legislative body.

SEC. 2. Section 65302.2 is added to the Government Code, to read:

65302.2. Upon the adoption, or revision, of a city or county's general plan, on or after January 1, 1996, the city or county shall utilize as a source document any urban water management plan submitted to the city or county by a water agency.

SEC. 3. Section 21151.9 is added to the Public Resources Code, to read:

21151.9. Whenever a city or county determines that an environmental impact report is required in connection with a project, as defined in Section 10913, and described in Section 10910, of the Water Code, it shall comply with Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

SEC. 4. Part 2.10 (commencing with Section 10910) is added to Division 6 of the Water Code, to read:

PART 2.10. WATER SUPPLY PLANNING TO SUPPORT EXISTING AND PLANNED FUTURE USES

10910. (a) Any city or county that determines that an environmental impact report is required in connection with a project, as defined in Section 10913, shall comply with this part if, as part of the approval of the project, either of the following is required:

(1) The adoption of a specific plan, if the city or county has not previously complied with this part for the project in question.

(2) An amendment to, or revision of, the land use element of a general plan, or a specific plan, that will result in a net increase in the stated population density or building intensity to provide for additional development.

(b) Notwithstanding subdivision (a), only a project that will result in a net increase in the stated population density or building intensity that has been identified in connection with the revision of any part of a general plan is subject to the requirements imposed by this part, if the project has not previously complied with this part.

(c) The city or county shall, at the time that it submits a notice of preparation pursuant to Section 21080.4 of the Public Resources Code, identify any water system that is, or may become, a public water system, as defined in Section 10912, that may supply water for the project.

(d) The city or county, at the time it submits a notice of preparation, shall request each public water system identified pursuant to subdivision (c) to assess whether the projected water demand associated with a proposed project described in subdivision (a) or (b) was included as part of the most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610). As part of that assessment, the public water

system shall indicate whether its total projected water supplies available during normal, single-dry, and multiple-dry water years included in the 20-year projection contained in the urban water management plan will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses.

(e) The governing body of each public water system shall approve the assessment prepared pursuant to subdivision (d), at a regular or special meeting and submit the assessment to the city or county not later than 30 days after the date on which the request was received.

(f) If the public water system that receives a request pursuant to subdivision (d) fails to submit its assessment to the city or county within the 30 days provided in subdivision (e), it shall be assumed, without a request for a specific extension of time, that the public water system has no information to submit.

10911. (a) If, as a result of its assessment, the public water system concludes that its water supplies are, or will be, insufficient, the public water system shall provide to the city or county its plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop those water supplies. Those plans may include, but are not limited to, information concerning all of the following:

(1) The estimated total costs, and the proposed method of financing the costs, associated with acquiring the additional water supplies.

(2) All federal, state, and local permits, approvals, or entitlements that are anticipated to be required in order to acquire and develop the additional water supplies.

(3) Based on the considerations set forth in paragraphs (1) and (2), the estimated timeframes within which the public water system expects to be able to acquire additional water supplies.

(b) The lead agency shall include in the environmental impact report the water supply assessment provided to the lead agency by the public water system pursuant to Section 10910, and any information provided pursuant to subdivision (a), except that the assessment and information shall not exceed 10 standard typewritten pages in length unless the lead agency determines that additional information is appropriate.

(c) The lead agency may include in the environmental impact report an evaluation of any information included in the environmental impact report provided pursuant to subdivision (b). The lead agency shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the proposed project, in addition to existing and planned future uses. If the lead agency determines that water supplies will not be sufficient, the lead agency shall include that determination in its findings pursuant to Section 21081 of the Public Resources Code.

10912. For the purposes of this part, "public water system" means a system for the provision of piped water to the public for human consumption that has 3000 or more service connections. A public water system includes all of the following:

(a) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system.

(b) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(c) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

10913. A project, for the purposes of this part, means any of the following activities for which an application has been submitted to a city or county:

(a) A proposed residential development of more than 500 dwelling units.

(b) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.

(c) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

(d) A proposed hotel or motel, or both, having more than 500 rooms.

(e) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres or land, or having more than 650,000 square feet of floor area.

(f) A mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500-dwelling-unit project.

10914. (a) Nothing in this part is intended to create a right or entitlement to water service or any specific level of water service.

(b) Nothing in this part is intended to either impose, expand, or limit any duty concerning the obligation of a public water system to provide certain service to its existing customers or to any future potential customers.

(c) Nothing in this part is intended to modify or otherwise change existing law with respect to projects which are not subject to this part.

(d) This part applies only to a project for which a notice of preparation is submitted on or after January 1, 1996.

10915. (a) The Legislature finds and declares all of the following:

(1) The voters of the County of San Diego, in November 1988, approved Proposition C, a measure that required the development of a regional growth management plan and directed the establishment of a regional planning and growth management review board.

(2) The County of San Diego and the cities in the county, by agreement, designated the San Diego Association of Governments as that review board.

(3) A regional growth management strategy that provides for a comprehensive regional strategy and a coordinated economic development and growth management program has been developed pursuant to Proposition C.

(4) The regional growth management strategy includes a water element to coordinate planning for water that is consistent with the requirements of this part.

(5) The San Diego County Water Authority, by agreement with the San Diego Association of Governments in its capacity as the review board, uses the association's most recent regional growth forecasts for planning purposes and to implement the water element of the strategy.

(b) The procedures established by the review board for the development and approval of the regional growth management strategy, including the water element and any certification process established to ensure that a general plan is consistent with that element, are deemed to comply with the requirements of this part.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 882

An act to add Section 1463.009 to the Penal Code, relating to victim restitution.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 1463.009 is added to the Penal Code, to read:

1463.009. Notwithstanding Section 1463, all bail forfeitures that are collected from any source in a case in which a defendant is charged and convicted of a violation of Section 261, 264.1, 286, 288, 288a, 288.5, or 289, or of a violent felony as defined in subdivision (c) of Section 667.5 or a serious felony as defined in subdivision (c) of

Section 1192.7, and that are required to be deposited with the county treasurer shall be allocated according to the following priority:

(a) The county shall be reimbursed for reasonable administrative costs for the collection of the forfeited property, the maintenance and preservation of the property, and the distribution of the property pursuant to this section.

(b) Out of the remainder of the forfeited bail money, a total of up to 50 percent shall be distributed in the amount necessary to satisfy any civil court judgment in favor of a victim as a result of the offense or a restitution order due to a criminal conviction to a victim who was under 18 years of age at the time of the commission of the offense if the defendant is convicted under Section 261, 264.1, 286, 288, 288a, 288.5, or 289, and to a victim of any age if the defendant has been convicted of a violent felony as defined in subdivision (c) of Section 667.5 or a serious felony as defined in subdivision (c) of Section 1192.7.

(c) The balance of the amount collected shall be deposited pursuant to Section 1463.

(d) Any county unable to satisfy the maintenance of effort requirement pursuant to paragraph (3) of subdivision (b) of Section 1463.001 by remitting to the General Fund an amount equal to the amount transmitted during the 1992–93 fiscal year, due to the distribution of funds to a victim or victims pursuant to subdivision (b) of this section, shall be credited in the amount necessary to make up the deficiency up to the amount distributed pursuant to subdivision (b) of this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 883

An act to amend Sections 11320.2, 11320.4, 11322.4, 11323.2, 11323.6, 11324.6, 11324.7, 11324.8, 11325, 11325.2, 11325.21, 11325.22, 11325.23, 11326, 11327.4, 11328, 11329.2, 11330.1, 11331.5, and 11334 of, to add Section 11320.3 to, and to repeal Article 3.1 (commencing with Section 11318) and Article 9 (commencing with Section 11520) of Chapter 2 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Article 3.1 (commencing with Section 11318) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 11320.2 of the Welfare and Institutions Code is amended to read:

11320.2. (a) The Legislature finds and declares that this article is intended to be the employment and training program for the state and is intended to satisfy the registration requirement of Section 602(a)(19)(A) of Title 42 of the United States Code. The Legislature further declares that this article shall be implemented even if the requirements of the federal Social Security Act are not met.

(b) The Legislature finds and declares that the state and counties recognize all of the following:

(1) Applicants for, and recipients of, aid under this chapter desire to work, and will do so if provided with the opportunity.

(2) The state and counties shall provide applicants for, and recipients of, aid under this chapter with the opportunity to obtain employment by offering a full range of employment training and supportive services, consistent with the needs of participants, that allow for informed choices in order to meet their employment goals.

(3) Able-bodied applicants for, and recipients of, aid under this chapter, are expected to work. The timeframes for fulfilling this expectation shall be set forth in an explicit contract between an applicant or recipient and the county.

(4) Applicants for, and recipients of, aid under this chapter who are required to register for employment and training programs pursuant to Section 11320.3 are individuals in special need of training as described in Section 2 of the federal Job Training Partnership Act (29 U.S.C. Sec. 1501), individuals who require special assistance provided in Section 123 of the Job Training Partnership Act (29 U.S.C. Sec. 1533), and most in need of employment and training opportunities as described in Section 141 of the Job Training Partnership Act (29 U.S.C. Sec. 1551). The Legislature finds and declares that these individuals are in the labor force actively seeking employment.

(5) Because the success of any program will depend on the state, it must exercise leadership to engender enthusiasm among counties, county welfare department directors, and county welfare department line staff, who are the principal contacts for many recipients enrolled in the program.

(6) A successful program should also be based upon all the following principles:

(A) Recipients should be able to make choices and to live up to the responsibilities involved in those choices.

(B) Participants should have an early opportunity to obtain a job.

(C) Expenditures should be targeted where they can do the most good.

(D) The state and the counties have a responsibility to provide a sufficient level of services to meet the needs of participants, as well as to undertake sufficient public information efforts to make recipients, potential participants, employers, or other public or private entities aware of the components, opportunities, and benefits of this program.

(E) New programs should be good investments of public funds. Added costs to the system should be incurred only when they are likely to result in long-term personal and community payoff.

(7) Clients should not be placed in any unassigned pool while waiting for a scarce resource.

(8) Most types of employment and training program components for applicants for, and recipients of, aid under this chapter have been successfully tried in this state.

(9) Aid under this chapter is available to persons who meet eligibility requirements. The program provided for in this article should not hamper continuation of this state's existing system of fraud detection, one of the most successful in the nation.

SEC. 3. Section 11320.3 of the Welfare and Institutions Code is amended to read:

11320.3. (a) Except as provided in subdivision (b), every individual, as a condition of eligibility for aid under this chapter, shall register for participation under this article.

(b) The following individuals shall not be required to register:

(1) An individual under 16 years of age, except as provided in subdivision (b) of Section 11331.5, during the time that provision is operative.

(2) Except as provided in subdivision (b) of Section 11331.5, during the time that provision is operative, a child attending an elementary, secondary, vocational, or technical school on a full-time basis. A person who is 16 or 17 years of age, or a person described in subdivision (d) who loses this exemption, shall not requalify for the exemption by attending school as a required activity under this article. For purposes of this paragraph, school shall not include postsecondary education.

(3) An individual who is ill, incapacitated, or of advanced age.

(4) Except as provided in subdivision (b) of Section 11331.5, during the time that provision is operative, an individual so remote from a program activity that his or her effective participation is precluded.

(5) Except as provided in subdivision (b) of Section 11331.5, during the time that provision is operative, an individual whose

presence in the home is required because of illness or incapacity of another member of the household.

(6) Except as provided in subdivision (b) of Section 11331.5, during the time that provision is operative, a parent or other relative who meets the criteria in subparagraph (A) or (B).

(A) The parent or other relative has primary responsibility for personally providing care to a child under the age of three years. An individual may be exempt only once for this reason during a period of continuous eligibility for aid under this chapter. An individual who has primary responsibility for personally providing care to a child under three years of age, and who has previously received this exemption, shall be exempt for a period of four months, upon the birth or adoption of a child. For purposes of this subparagraph, a "period of continuous eligibility" ends only after a break in eligibility for aid of six consecutive calendar months or more. An individual meeting this criterion who volunteers to register may not be required to participate unless it is guaranteed that child care will be provided and participation will not be required for more than 20 hours per week.

(B) The parent or other relative has primary responsibility for personally providing care to a child aged three to five years, inclusive, unless it is guaranteed that child care will be provided and, subject to subparagraph (D), participation will not be required for more than 20 hours per week.

(C) In a family eligible for aid under this chapter due to the unemployment of the principal wage earner, the exemption criteria contained in subparagraph (A) or (B) shall be applied to only one parent.

(D) (i) The department shall seek a federal waiver of the 20-hour weekly participation limit specified in subparagraph (B).

(ii) The waiver sought pursuant to clause (i) may be implemented only if the director executes a declaration, which shall be retained by the director, specifying that federal approval for the waiver of the 20-hour weekly participation limit has been obtained, and only for the duration of that approval.

(7) Except as provided in subdivision (b) of Section 11331.5, during the time that provision is operative, a woman who is pregnant for whom it has been medically verified that the anticipated delivery date is during the month of required participation or is within the six-month period immediately following the month of required participation.

(8) Except as provided in subdivision (b) of Section 11331.5, during the time that provision is operative, an individual who is earning at least the state or federal minimum wage, whichever is higher, for working not less than 30 hours per week in unsubsidized employment that is expected to last a minimum of 30 days. The minimum wage requirement shall apply to the net earnings of self-employed individuals, and it shall not apply during the first six

months of self-employment or employment that is compensated by commission. This exemption shall continue to apply if there is a temporary break in full-time employment that is expected to last no longer than 10 working days.

(9) An individual who is a full-time volunteer serving under the Volunteers in Service to America (VISTA) program, pursuant to Title 1 of the federal Domestic Volunteer Service Act of 1973 (P.L. 93-113).

(c) Any individual not required to register may choose to register voluntarily under this article, and may withdraw that registration at any time without loss of eligibility for aid under this chapter, if his or her status has not changed in a way that would require registration.

(d) (1) Notwithstanding subdivision (a), a custodial parent who is under 20 years of age and who has not earned a high school diploma or its equivalent, and who is not exempt or whose only basis for exemption is subparagraph (A) of paragraph (6) of subdivision (b), shall be required to register solely for the purpose of earning a high school diploma or its equivalent. During the time that Article 3.5 (commencing with Section 11331) is operative, this subdivision shall only apply to a custodial parent who is 19 years of age.

(2) Notwithstanding subparagraph (B) of paragraph (6) of subdivision (b), full-time participation shall be required of the parent.

(3) Section 11325.25 shall apply to a custodial parent who is 18 or 19 years of age and who is required to participate under this article. Any referral pursuant to an evaluation that results in an assignment to any training or work activity shall be subject to subparagraph (B) of paragraph (6) of subdivision (b).

(4) Custodial mothers under 20 years of age who have not earned a high school diploma or its equivalent shall be exempted due to incapacity as provided in paragraph (3) of subdivision (b) after the birth of the child for a period of postpartum recovery as prescribed by a physician.

(e) Notwithstanding paragraph (1) of subdivision (d), the county may determine that participation in education activities for the purpose of earning a high school diploma or equivalent is inappropriate for an 18 or 19 year old custodial parent only if that parent is reassigned pursuant to an evaluation under Section 11325.25, or, at appraisal is already in an educational or vocational training program that is approvable as a self-initiated program as specified in Section 11325.23. If that determination is made, the parent shall be allowed to continue participation in the self-initiated program subject to Section 11325.23. During the time that Article 3.5 (commencing with Section 11331) is operative, this subdivision shall only apply to a custodial parent who is 19 years of age.

SEC. 4. Section 11320.4 of the Welfare and Institutions Code is amended to read:

11320.4. (a) Every applicant for, or recipient of, aid under this chapter who is required to register for employment and training programs pursuant to Section 11320.3 shall be required to register under this article with the county welfare department. Any applicant for, or recipient of, aid under this chapter who is not required to participate under this article may volunteer to participate in the program.

(b) Any person required to register under this article with the county welfare department who refuses to register shall be subject to the procedures provided for in Sections 11327.4 and 11327.5.

(c) (1) Any AFDC applicant or recipient who is a member of, and who lives within the designated service area of, any Indian tribe operating a job opportunities and basic skills training program approved by the federal Department of Health and Human Services under the federal Family Support Act of 1988 (P.L. 100-485) shall, if required pursuant to a tribe's approved operating plan, participate in the program in place of participation pursuant to this article.

(2) If an individual refuses or fails to comply with program requirements without good cause, and conciliation efforts as specified in Section 11327.4 have failed to resolve the dispute, Section 11327.5 shall apply.

SEC. 5. Section 11322.4 of the Welfare and Institutions Code is amended to read:

11322.4. (a) If resources are not sufficient to serve all registrants, the county shall adopt a method to determine the order in which registrants are given priority for, or temporarily excluded from, participation in the program.

(b) The method adopted by the county shall meet the following requirements:

(1) Existing participants shall be given the highest priority. They shall be given an opportunity to complete the services necessary to reach their employment goals, as identified in their contracts with the county, unless the county must temporarily exclude them from the program due to insufficient resources in accordance with the county plan. This shall include individuals who have participated in the Cal-Learn Program pursuant to Article 3.5 (commencing with Section 11331), during the time that article is operative, and who shall receive any additional services needed to prepare them for employment.

(2) Fifty-five percent of funds expended for the program in the county shall be for services to any of the following target populations.

(A) Applicants for, or recipients of, AFDC who have received AFDC for any 36 of the 60 months immediately preceding the most recent month for which application has been made.

(B) Custodial parents under the age of 24 who had little or no work experience in the preceding year.

(C) Custodial parents under the age of 24 who have not completed a high school education and are not enrolled in high school, or in a high school equivalency course of instruction.

(D) Members of a family in which the youngest child is within two years of being ineligible for aid under this chapter because of age.

(3) Within any target population selected by the county or specified in paragraph (2), first priority shall be given to an applicant or recipient who volunteers to participate in the program. For purposes of this section, a "volunteer" is any person eligible to participate in the program, either exempt or nonexempt, who expresses a desire to participate.

(4) A county may not give lesser priority to any target population group because of estimated costs of supportive services to that group.

(c) The method adopted by the county shall be described in the county plan and subject to the approval of the department pursuant to Section 11321.2. The plan shall also include information on local demographic, economic, or other conditions that support the need for the method selected.

(d) This section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331) during the time that article is operative.

SEC. 6. Section 11323.2 of the Welfare and Institutions Code is amended to read:

11323.2. (a) Necessary supportive services shall be available to every participant in order to participate in the program activity to which he or she is assigned or to accept employment, except as otherwise provided in Section 11500. As provided in the contract entered into between the county and participant pursuant to this article, supportive services shall include all of the following:

(1) Child care. Paid child care shall be available to every participant with a dependent child in the assistance unit who needs paid child care if the child is under 13 years of age or requires child care or supervision due to a physical, mental, or developmental disability or other similar condition as verified by the county welfare department, or who is under court supervision. A child in foster care receiving benefits under Title IV-E of the federal Social Security Act (42 U.S.C.A. Sec. 670 et seq.) or a child who would become a dependent child except for the receipt of federal Supplemental Security Income benefits pursuant to Title XVI of the federal Social Security Act (42 U.S.C.A. Sec. 1381 et seq.) shall be deemed to be a dependent child for the purposes of this paragraph.

(2) Transportation costs, which shall be governed by regional market rates as determined in accordance with regulations established by the department.

(3) Ancillary expenses, which shall include the cost of books, tools, clothing, fees, and other necessary costs.

(4) Personal counseling. A participant who has personal or family problems that would affect the outcome of the employment plan

entered into pursuant to this article shall, to the extent available, receive necessary counseling or therapy to help him or her and his or her family adjust to his or her job or training assignment.

(b) (1) If provided in a county plan approved pursuant to Sections 11321 and 11321.2, and to the extent federal financial participation for purposes of this subdivision is available, the county may continue to provide case management and supportive services under this section to former participants who become subject to paragraph (8) of subdivision (b) of Section 11320.3. The county may provide these services for up to the first 90 days of employment to the extent they are not available from other sources and are needed for the individual to retain the employment.

(2) The county shall not continue to apply this option if the number of participants it is able to serve decreases by 10 percent or more in any year after the option is implemented.

(3) The department shall seek any waiver from the United States Department of Health and Human Services that is necessary to obtain approval and federal financial participation for the services under this subdivision. If a waiver is necessary, this subdivision shall only be operative for the duration of the waiver, as specified in the declaration that federal approval for the waiver has been obtained, which the director shall execute and retain.

SEC. 7. Section 11323.6 of the Welfare and Institutions Code is amended to read:

11323.6. (a) The cost of child care services provided under this article shall be governed by regional market rates. Participants shall be allowed to choose legal child care and the cost of that child care shall be reimbursed by counties if the cost is within the regional market rate. For purposes of this section, "regional market rate" means care costing no more than 1.5 market standard deviations above the mean cost of care for that region.

(b) Reimbursement to child care providers shall not exceed the fee charged to private clients for the same service. Reimbursement shall be made at a rate lower than that charged to private clients for the same service if the child care program agrees to charge a lower fee.

(c) Reimbursement shall be made on a per month, per week, per day, or per hour basis depending upon the basis used to charge private clients for the same service.

(d) (1) For purposes of this article, regional market rates shall be determined in accordance with resource and referral programs provided for under Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code, and the Alternative Payment Program provided for under Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code. Participant plans shall include immediate referrals to local resource and referral agencies, as appropriate.

(2) Counties shall not be bound by the child care rate limits described in subdivision (a) when the care is provided in a region where there are no more than two child care providers of the type needed by the participant.

(e) (1) Day care by family members shall be encouraged, but the choice between licensed or exempt day care arrangements shall be made by the recipient.

(2) Reimbursement shall not be made for child care services when care is provided by parents, legal guardians, or members of the assistance unit, including, but not limited to, essential persons.

(f) A child care provider located on an Indian reservation and exempted from state licensing requirements shall meet the conditions specified in Section 11324 and applicable tribal standards.

SEC. 8. Section 11324.6 of the Welfare and Institutions Code is amended to read:

11324.6. Any employment or training program position created pursuant to this article, other than a preemployment preparation position, may not be created as a result of, or may not result in, any of the following:

(a) Displacement or partial displacement of current employees, including, but not limited to, a reduction in hours of nonovertime and overtime work, wages, or employment benefits.

(b) The filling of positions which would otherwise be promotional opportunities for current employees.

(c) The filling of a position, prior to compliance with applicable personnel procedures or provisions of collective bargaining agreements.

(d) The filling of a position created by termination, layoff, or reduction in work force, caused by the employer's intent to fill the position with a subsidized position pursuant to this article.

(e) A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between employees and employers.

SEC. 9. Section 11324.7 of the Welfare and Institutions Code is amended to read:

11324.7. (a) The department shall provide a grievance process for regular employees and their representatives who wish to file a complaint that an assignment to preemployment preparation, work experience, on-the-job training, or any activity funded by grant diversion violates any of the displacement provisions contained in Section 11324.2, Section 11324.6, or paragraph (6) of subdivision (g) of Section 11322.8, as applicable, respecting any employment or training position created pursuant to this article.

(b) (1) The grievance process established pursuant to subdivision (a) shall consist of an informal procedure followed by a hearing if the informal procedure fails to resolve the complaint to the satisfaction of the complainant.

(2) The grievance process shall be conducted in accordance with rules and notification requirements adopted and promulgated in federal law that also provides for an appeal process to the United States Department of Labor.

(3) The department shall issue instructions and requirements for the grievance process.

(c) The department shall administer the employee grievance process either directly or through the county welfare departments, or may enter into agreements with another state agency to administer all or any part of the grievance process.

(d) Notwithstanding subdivisions (b) and (c), the department shall require the use of any existing grievance procedure that is part of a collective bargaining agreement between the employer and the labor union representing the regular employee, in lieu of the process established by this section.

(e) Remedies for complaining regular employees in the process established by this section shall include, where appropriate, reinstatement, retroactive pay, and retroactive benefits.

SEC. 10. Section 11324.8 of the Welfare and Institutions Code is amended to read:

11324.8. (a) At the time an individual applies for aid under this chapter, or at the time a recipient's eligibility for aid is determined, the county shall do all of the following:

(1) Provide the individual, in writing and orally as necessary, with at least the following program information:

(A) A general description of the education, employment, and training opportunities and the supportive services available, including transitional benefits.

(B) A description of the exemptions from required participation provided under this article and the consequences of a refusal to participate in program components, if not exempt.

(C) A description of the responsibility of the participant to cooperate in establishing paternity and enforcing child support obligations, and to assist individuals in establishing paternity and obtaining child support as a condition of eligibility.

(2) Determine whether the individual is required to register for the program provided under this article. At the time the determination is made, any individual who is deemed to be required to register under this article shall immediately register with the county welfare department.

(b) At the time an individual registers pursuant to this article, he or she shall receive a written preliminary determination that he or she is a member of a targeted group, for purposes of any applicable and operative federal Targeted Jobs Tax Credit and California Jobs Tax Credit. With respect to any person required to register under this article, registration pursuant to this section shall be a condition of eligibility for aid under this chapter, except that any delay in registration due to circumstances beyond the control of the

individual shall not adversely affect his or her eligibility for aid under this chapter.

(c) The recipient may appeal a determination that he or she is required to register under this article or sign a contract pursuant to Section 11325.21, through the procedures set forth in Chapter 7 (commencing with Section 10950) of Part 2.

(d) Persons not required to register may volunteer to participate.

(e) An applicant for, or a recipient of, aid who is dissatisfied with the terms of the contract may seek redress through conciliation, as described in Section 11327.4.

(f) (1) In accordance with procedures specified by the department, the county shall allow individuals to express their desire to participate in the program and provide instructions on how to enter the program.

(2) Notwithstanding paragraph (1), an indication of preference not to participate shall not exempt individuals required to register for the program from participation in the program.

SEC. 10.5. Section 11325 of the Welfare and Institutions Code is amended to read:

11325. (a) Persons who are not exempt but who meet the following criteria shall not be required to participate in program components, beyond appraisal as specified in Section 11325.2, until the county welfare department determines that the situation that permits nonparticipation no longer exists:

(1) (A) A person who, at the time of appraisal, is enrolled on a full-time basis in a program to earn a license, certificate, or degree that will lead to employment.

(B) If the county welfare department does not agree that the program will lead to employment, the registrant shall be allowed to continue in the program if sufficient documentation can be shown to demonstrate that the program will lead to employment. Any of the following shall be proof that a program leads to employment:

(i) A signed statement that an employer will give the person a job upon program completion.

(ii) A list of three employers who have frequent openings in the occupation pursued by the participant at a skill level that can be achieved by the participant through skill training components offered by the program.

(iii) A statement from a school district, community college, university, service delivery area, or employment development office stating that the program will lead to employment.

(C) If the individual is attending less than full time at the time of appraisal but agrees to full-time attendance as soon as possible, he or she shall be considered to be attending on a full-time basis.

(D) A person subject to this subdivision shall participate on a full-time basis and make satisfactory progress in that program according to the standards of the provider.

(E) A person may participate on a less than full-time, but not less than half-time, basis if full-time participation is not feasible due to good cause, as defined in Section 11328.

(2) A person who is so seriously dependent upon alcohol or drugs that work or training is precluded. This paragraph shall not apply in a county that has included the option in subdivision (b) in its county plan.

(3) A person who is having an emotional or mental problem that precludes participation.

(4) A person who is involved in legal difficulties, such as court-mandated appearances that preclude participation.

(5) A person who does not have the legal right to work in the United States.

(6) A person who has a severe family crisis.

(7) A person who is in good standing in a union that controls referrals and hiring in the occupation.

(8) A person who is temporarily laid off from a job with a definite callback date.

(9) A person, or a family member, has a medically verified illness.

(10) A woman in the first trimester of pregnancy.

(11) A person who lacks the necessary child care for children described in paragraph (1) of subdivision (a) of Section 11323.2 or for children described in that paragraph who are not members of the assistance unit, or a person who lacks necessary transportation.

(12) A person who is employed for 15 or more hours per week and meets all of the following criteria:

(A) The individual is earning at least the state or federal minimum wage, whichever is higher. This requirement shall apply to the net earnings of a self-employed individual, and it shall not apply during the first six months of self-employment or employment compensated by commission.

(B) The individual is also participating in activities approved by the county welfare department that are similar to job search, education, or training activities in the program. This requirement may be met by making satisfactory progress while participating in an education or training program to earn a license, certificate, or degree that will lead to employment, if the person is enrolled in the program on at least a half-time basis by the provider's standards. If the county welfare department does not agree that the program will lead to employment, the registrant shall be permitted to continue in the program if sufficient documentation can be shown through the process described in subparagraph (B) of paragraph (1) to demonstrate that the program will lead to employment.

(C) The combined hours of employment and participation in other approved activities shall equal at least 30 hours per week.

(b) (1) If provided in the county plan approved by the department, the county shall permit participation to be deferred by a person who is seriously dependent upon alcohol or drugs only if the

individual participates in, or actively pursues access to, an alcohol or drug treatment program that is licensed, certified, or has a contract with the state or county. The county plan shall describe the available treatment programs, including programs providing services that are appropriate to the needs of women with children.

(2) Notwithstanding paragraph (1), a person shall not be required to participate in an alcohol or drug treatment program that is licensed, certified, or has a contract with the state or county to receive this deferral when any of the following conditions exist:

(A) The person is on a waiting list to participate in a program.

(B) The necessary child care services are not available.

(C) There is no treatment program available that is appropriate to the individual's needs, as defined by the department in regulations.

(3) A person who refuses to pursue the treatment required as a condition for this deferral, and who subsequently fails or refuses to comply with program requirements, shall not have good cause for noncompliance on the basis of his or her drug or alcohol dependence.

(c) Participation of an individual who, upon entering GAIN, is attending a self-initiated program that does not meet the approval criteria in paragraph (1) of subdivision (a) or in Section 11325.23 may be deferred in order to permit completion of the program semester, quarter, or increment of not more than six months.

(d) The department shall promulgate regulations that specify when the county welfare department shall determine whether an individual meets any of the criteria listed in subdivisions (a), (b), and (c).

(e) This section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331), during the time that article is operative.

(f) For all other registrants, the county shall develop an employment plan.

(g) The county welfare department shall review the deferral for its continuing appropriateness in accordance with the projected length of the deferral, but not less than every 12 months. The participant shall cooperate with the county welfare department and provide information, including written documentation, as required to complete the deferral review.

SEC. 11. Section 11325.2 of the Welfare and Institutions Code is amended to read:

11325.2. (a) At the time a registrant enters the program, the county shall conduct an appraisal pursuant to regulations adopted by the department. At a minimum, the appraisal shall provide information about the registrant in the following areas:

(1) Employment history.

(2) Need for basic education services due to a lack of basic literacy or mathematics skills, a high school diploma or its equivalent, or English language skills.

(3) Need for a delay in program participation pursuant to Section 11325.

(4) Need for supportive services as described in Section 11323.2.

(b) This section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331) during the time that article is operative.

SEC. 12. Section 11325.21 of the Welfare and Institutions Code is amended to read:

11325.21. (a) Any individual who enters the program pursuant to this article shall enter into a written contract with the county welfare department.

(b) The county shall allow the participant three working days after signing the contract or subsequent amendments to the contract in which to evaluate and request changes to the terms of the contract.

(c) The contract shall be written in clear and understandable language, and have a simple and easy-to-read format.

(d) The contract shall contain at least all of the following general information:

(1) A general description of the program provided for in this article, including available program components and supportive services.

(2) A general description of the rights, duties, and responsibilities of program participants, including a list of the exemptions from the required participation under this article, the consequences of a refusal to participate in program components, and criteria for successful completion of the program.

(3) A description of the grace period required in paragraph (6) of subdivision (b) of Section 11325.22.

(e) The contract shall specify, and shall be amended to reflect changes in, the participant's employment goal, a description of services to be provided in accordance with Sections 11322.6, 11322.8, and 11323.1 as needed to attain the goal, and specific requirements for successful completion of assigned activities including required hours of participation.

The contract shall also include a general description of supportive services pursuant to Section 11323.2 that are to be provided as necessary for the participant to complete assigned program activities.

(f) Any assignment to a program component shall be reflected in the contract or an amendment to the contract. The county and the recipient shall be bound by the terms of the contract or any amendments thereto. The participant shall maintain satisfactory progress toward the goal of employment through the methods set forth in the contract, and the county shall provide the services specified in the contract, except that the county shall not be bound by the terms of a contract between the participant and another county.

(g) A participant shall not be placed involuntarily in any other training or education component while waiting to begin participating in an assignment specified in the contract.

(h) This section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331) during the time that article is operative.

SEC. 13. Section 11325.22 of the Welfare and Institutions Code is amended to read:

11325.22. (a) (1) Following the appraisal required by Section 11325.2, all participants except those described in paragraph (2) of this subdivision, shall be assigned to participate for a period of three weeks in job search services. These services may include any of the services described in Section 11322.6 that are appropriate to the participant's needs. The period of job search services may be shortened if the participant and the county agree, in writing in the participant contract, that further services would not be beneficial. The period of job search services may be extended up to the limits specified in subdivision (f) of Section 11322.6 if the county and the participant agree, in writing in the participant contract, that continued job search efforts are likely to lead to employment.

(2) The following individuals shall not be required, but may be permitted, to participate in job search services as their first program assignment following appraisal:

(A) A person subject to subdivision (d) of Section 11320.3 shall be required to participate in job search services as provided in paragraph (1) upon earning a high school diploma or its equivalent, if she or he has not already taken the option to complete these services as the first program assignment following appraisal.

(B) A person who has been determined by the county pursuant to regulations developed by the department to lack the skills or education necessary to succeed in even the most unskilled employment. The individual shall be required to participate in job search services as provided in paragraph (1) when the participant and county agree in writing in the participant contract that sufficient skills and education have been acquired to enable the individual to benefit from those services. This requirement shall not apply to a participant who has already taken the option to complete these services as the first program activity following appraisal.

(C) A person who is enrolled in, or attending in good standing, an approved self-initiated program as specified in Section 11325.23.

(D) A person who has participated in job search activities under an employment program within the previous six months, if the county determines that another period of job search would not be beneficial.

(E) A person who has returned to the county's program under this article within a two-year period, has only participated in appraisal and the services provided in this subdivision, and has held, but not retained, two or more jobs during the two-year period.

(F) A person who expresses a desire to be assigned to a basic education activity if the individual lacks a high school diploma or its equivalent and has held, but not retained, two or more jobs during the two-year period prior to appraisal. This person shall be required to participate in job search services as provided in paragraph (1) upon earning a high school diploma or its equivalent, if he or she has not already taken the option to complete these services as the first program assignment following appraisal.

(b) (1) Upon the completion of job search services, or a determination that those services are not required in accordance with paragraph (2) of subdivision (a), the participant shall be assigned to one or more of the activities described in Section 11322.8 and 11323.1 as needed to attain his or her employment goal.

(2) (A) The assignment to one or more of the program activities as required in paragraph (1) of this subdivision shall be based on the employment plan developed pursuant to an assessment as described in Section 11325.4. The employment plan shall be based, at a minimum, on consideration of the individual's existing education level, employment experience and employment goals, available program resources, and local labor market opportunities.

(B) An assessment shall be performed upon completion of job search services or a determination that those services are not required as the first activity. For an assignment to training in business development and self-employment, the assessment shall be performed as required in Section 11323.1.

(C) Notwithstanding subparagraphs (A) and (B), an assessment shall not be required to develop an employment plan for a person who is participating in an approved self-initiated program pursuant to Section 11325.23.

(3) A participant who lacks basic literacy or mathematics skills, a high school diploma or general educational development certificate, or English language skills, shall be assigned to participate in adult basic education as described in subdivision (c) of Section 11322.8, as appropriate and necessary for achievement of the individual's employment goal.

(4) A participant shall not be assigned to a program component provided in Section 11322.8, excluding activities described in subdivision (c) of Section 11322.8, that exceeds two years or, with respect to classroom education or training, two academic years. The two-year period may be extended, one time only, for a period not to exceed six months if it is reasonable to expect that the component will be completed within the extended period and the individual has been unable to complete the component due to any of the following circumstances:

(A) The individual's basic skills needs required more class time than was estimated at the commencement of the component.

(B) The school or college did not offer required classes in a sequence that permitted completion of the component program within the prescribed time period.

(C) The individual had a personal or family crisis that resulted in the inability to complete the component without the additional six-month period of attendance.

(D) The individual worked a minimum of 10 hours per week in employment paying at least the state or federal minimum wage, whichever is greater, for no less than six months while participating in the assigned program.

(5) (A) Participation in activities assigned pursuant to this section may be sequential or concurrent. The county may require concurrent participation in the assigned activities if it is appropriate to the participant's abilities, consistent with the participant's employment plan, and the activities can be concurrently scheduled.

(B) The combined hours of participation in assigned concurrent activities shall not exceed 32 hours per week for an individual who has primary responsibility for personally providing care to a child under six years of age, or 40 hours per week for any other individual.

(6) The participant has 30 days from the beginning of a training or education assignment in which to request a change or reassignment to another component. The county shall grant the participant's request for reassignment if another component is available, or expected to be available within a reasonable period of time, that is consistent with the participant's employment plan. This grace period shall be available only once to each participant.

(7) In the case of an individual who is an applicant for aid under this chapter and who is required to register pursuant to this article, mandated activities shall be limited to those necessary to enter into a written contract as specified in Section 11325.21, and to participation in job services as specified in subdivision (a) of this section.

(c) Any assignment or change in assignment to a program activity pursuant to this section shall be included in the participant contract, or an amendment to the contract, as required in Section 11325.21.

(d) If unsubsidized employment is not obtained upon completion of activities included in the employment plan, including any plan that provides for a self-initiated program as described in Section 11325.23, the participant shall be assigned to job search services for a period not to exceed the limits set in subdivision (f) of Section 11322.6. These services may include any of the services described in Section 11322.6 that the county determines are appropriate to the participant's needs.

(e) (1) A participant who has not yet received an assessment and has not obtained unsubsidized employment upon completion of the job search services required in subdivision (d) shall be referred to assessment pursuant to Section 11325.4. Based on the employment plan developed as a result of the assessment, the participant may be

assigned to additional program activities in accordance with subdivision (b).

(2) A participant who has not obtained unsubsidized employment upon completion of the activities in an employment plan developed pursuant to an assessment and the job search services required by subdivision (d) shall be referred to reappraisal as described in Section 11326.

(f) Notwithstanding subdivisions (a) to (e), inclusive, the department shall adopt regulations or policies, as required by federal law, that specify the participation requirements with which one parent in a family eligible for aid under this chapter due to the unemployment of the principal wage earner is required to comply.

(g) The criteria for successful completion of an assigned education or training activity shall include regular attendance, satisfactory progress, and completion of the assignment. A person who fails or refuses to comply with program requirements for participation in the activities assigned pursuant to this section shall be subject to Sections 11327.4 and 11327.5.

(h) This section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331) during the time that article is operative.

SEC. 14. Section 11325.23 of the Welfare and Institutions Code is amended to read:

11325.23. (a) (1) Any individual who, at the time of appraisal, is enrolled in, or attending in good standing, a self-initiated educational or vocational training program that is likely to lead to unsubsidized employment in an occupation in demand may continue to participate in that program until completion of the program for a period not to exceed two years from the date the contract reflecting the self-initiated program is signed.

(2) The individual's program shall be scheduled to be completed within the two-year period. The two-year period may be extended, one time only, for a period not to exceed six months if it is reasonable to expect that the self-initiated program will be completed within the extended period and the individual has been unable to complete the component due to any of the following circumstances:

(A) The individual's basic skills needs required more class time than was estimated at the commencement of the program.

(B) The school or college did not offer required classes in a sequence that permitted completion of the self-initiated program within the prescribed time period.

(C) The individual had a personal or family crisis that resulted in the inability to complete the program without the additional six-month period of attendance.

(D) The individual worked a minimum of 10 hours per week in employment paying at least the state or federal minimum wage, whichever is greater, for no less than six months while participating in the assigned program.

(b) In order to continue in a self-initiated training or education program, an applicant for, or recipient of, aid under this chapter shall need the education or training in order to become employable in unsubsidized employment. Any individual who meets either of the following criteria shall be deemed to be employable:

(1) Possesses a baccalaureate degree.

(2) Has the education or job skills necessary to obtain unsubsidized employment in an occupation in demand that will provide the individual with an income at least equal to two times the federal poverty line for the appropriate family size. A county may waive this requirement if an individual is able to demonstrate that, due to compelling personal circumstances, employment in the previous occupation is not realistic including, but not limited to, a work-related disability, inability to obtain required union membership, or hours of employment that cause a severe hardship on the recipient's family.

(c) (1) Supportive services reimbursement shall be limited to child care and transportation for any participant in a self-initiated training or education program approved under this subdivision. This reimbursement shall be provided if no other source of funding for those costs is available.

(2) Any offset to supportive services payments shall be made in accordance with subdivisions (d) and (e) of Section 11323.4.

(d) (1) In order to continue in a self-initiated training or education program, a GAIN participant shall be attending at least full time and shall make satisfactory progress as periodically measured according to the standards of the program in which the individual is enrolled. If the individual is attending less than full time upon entry into GAIN but she or he agrees to full-time attendance as soon as possible, the individual shall be considered to be attending on a full-time basis.

(2) A GAIN participant may participate on less than a full-time basis, but not less than on a half-time basis, if full-time participation is not feasible due to good cause as defined in Section 11328.

(e) Participation in the self-initiated education or vocational training program shall be reflected in the contract required by Section 11325.21. The contract shall provide that whenever an individual ceases to participate in, refuses to attend regularly, or does not maintain satisfactory progress in the self-initiated program, the individual shall participate in the program in accordance with Section 11325.22.

(f) Any person whose previously approved self-initiated education or training program is interrupted for reasons that meet the good cause criteria specified in Section 11328 may resume participation in the same program if the participant maintained good standing in the program while participating and the self-initiated program continues to meet the approval criteria. The county shall adjust the completion date of the program accounting for the time

of absence to allow the participant a cumulative total of two years to complete the program.

(g) If the individual has not obtained unsubsidized employment upon completion of the self-initiated program, the individual shall participate in accordance with subdivisions (d) and (e) of Section 11325.22.

(h) In the event a county welfare department does not agree that the participant's occupational goal is likely to lead to employment, the participant shall be permitted to continue pursuing that goal if sufficient documentation can be shown to demonstrate that the local labor market provides reasonable opportunities to work in the desired occupation. The county welfare department shall give participants whose self-initiated plan has been denied the chance to demonstrate that the local labor market presents job opportunities in the chosen occupation. Proof that job opportunities exist include, but are not limited to:

(1) A signed statement that an employer will give the person a job upon program completion.

(2) A list of three employers who have frequent openings in the occupation pursued by the participant and at a skill level that can be achieved by the participant through skill training components offered by the program.

(3) A statement from a school district, community college district, service delivery area, or Employment Development Department office identifying the occupation as a demand occupation in the local labor market.

(i) Notwithstanding subdivision (a) to (g), inclusive, the department shall adopt regulations or policies, as required by federal law, that specify the participation requirements with which one parent in a family eligible for aid under this chapter due to the unemployment of the principal wage earner is required to comply.

(j) This section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331) during the time that article is operative.

SEC. 15. Section 11326 of the Welfare and Institutions Code is amended to read:

11326. (a) The county shall conduct a reappraisal of any participant who does not obtain unsubsidized employment upon completion of all activities included in a postassessment employment plan developed pursuant to Section 11325.4 and job search services required by subdivision (d) of Section 11325.22. The reappraisal shall evaluate whether there are extenuating circumstances as defined by the department that prevent the participant from obtaining employment within the local labor market area with the education and training previously received.

(b) Upon a determination that extenuating circumstances exist, the participant shall be assigned to receive additional services in

accordance with subdivision (b) of Section 11325.22 as the county determines to be appropriate and necessary.

(c) Upon a determination that no extenuating circumstances exist, and until this determination is reversed, the participant shall only receive the following services:

(1) Preemployment preparation or other work experience assignment. The participant shall continue to seek employment during the preemployment preparation or work experience assignment. A county that is operating under a cost reduction plan pursuant to Section 11322.2 may limit the individual's participation in these activities to one year.

(2) Job search services as described in Section 11322.6 for a period not to exceed eight weeks per year.

(d) (1) A preemployment preparation or work experience assignment pursuant to subdivision (c) shall meet the requirements of paragraph (2) if the participant meets all of the following criteria:

(A) Does not meet any of the exemption or deferral criteria specified in Sections 11320.3 and 11325.

(B) Is unemployed or employed for less than 15 hours per week.

(C) Has received aid payments pursuant to Section 11450 for 22 out of the last 24 months.

(2) An individual who meets the criteria in paragraph (1) shall be required to participate at least 100 hours per month in a preemployment preparation or work experience assignment that is appropriate to his or her skills and abilities. The hours of participation in a preemployment preparation assignment shall exceed 100 hours per month if required by paragraph (3) or (4) of subdivision (b) of Section 11322.8. A work experience assignment may be appropriate community service that includes, but is not limited to, volunteer hours in a school, hospital, public library, or park and recreation district.

(3) The department shall seek the federal waivers that are necessary to implement this subdivision. This subdivision shall only be operative for the duration of the waivers, as specified in the declaration that federal approval for the waivers has been obtained, which the director shall execute and retain.

(e) If an individual fails or refuses to comply without good cause with the requirements of this section, the conciliation provisions of Section 11327.4 and the sanction provisions of Section 11327.5 shall apply.

SEC. 16. Section 11327.4 of the Welfare and Institutions Code is amended to read:

11327.4. (a) (1) Whenever an individual has failed or refused to comply with program requirements without good cause in a program component to which he or she is assigned pursuant to this article, and the participant continues to fail or refuse to comply with program requirements after a period of conciliation between the county and

the participant, the individual shall be subject to sanctions specified in Section 11327.5.

(2) For the purposes of this article, "failing or refusing to comply with program requirements" shall be limited to: failing or refusing to sign a participant contract, participate or provide required proof of satisfactory progress in an assigned program activity, or accept employment; terminating employment; or reducing earnings. For the purposes of this subdivision, assigned program activities include, but are not limited to, orientation, assigned job search, education or training activities, including self-initiated programs pursuant to Section 11325.23, appraisal, and assessment or reappraisal appointments. To the extent required by federal law or regulations, an individual who participates in the GAIN program and subsequently obtains employment of 30 hours or more per week and who remains on aid shall be considered to be refusing to comply with program requirements if he or she terminates that employment without good cause.

(b) (1) The county shall schedule a time during which each individual who has failed or refused to comply with program requirements has an opportunity to demonstrate that he or she had good cause for that refusal or failure. The county shall schedule an appointment within 10 working days of the discovery of the nonparticipation. The individual shall be allowed to reschedule the cause determination appointment once. This rescheduled appointment shall take place within five working days of the initial appointment, unless delayed by extenuating circumstances. The cause determination process shall not exceed 15 working days from the date of discovery of the nonparticipation, unless delayed by extenuating circumstances.

(2) The county shall send a written notice that shall do all of the following:

(A) Inform the individual of the date and time of the scheduled appointment.

(B) Include a list of the reasons that constitute good cause for not participating in the program.

(C) Describe the transportation and child care services that a person is entitled to, as needed in order to attend the appointment.

(D) Inform the individual that failure to either attend the cause determination appointment or reschedule this appointment shall result in a cause determination in his or her absence, based on available evidence.

(3) Whenever a determination of good cause has been made, the county shall issue a written notice to the individual that reflects this determination.

(c) When a county determines that a person failed or refused to meet program requirements without good cause, the county shall notify the individual, in writing, of this determination. Except as provided in subdivision (d), the notice also shall inform the

individual that he or she has entered into a 20-calendar-day period of conciliation, during which the county and the individual shall attempt to resolve any problems that are contributing to the failure or refusal to meet program requirements. This notice shall be mailed within five working days of the cause determination, unless delayed by extenuating circumstances. The 20-calendar-day period shall begin on the date the county issues the notice of the beginning of conciliation.

(d) (1) If the individual fails to respond to the county's notice for a cause determination meeting and the county determines there was not good cause for the noncompliance, the county shall issue a notice of action. This notice shall inform the individual that a 20-calendar-day period of conciliation has begun and that a sanction will be imposed if the individual fails to contact the county to establish good cause or agree on a conciliation plan within 20 calendar days from the date the notice of action is issued.

(2) If the individual contacts the county pursuant to the notice of action required in paragraph (1), a 20-calendar-day period of conciliation shall begin on the date the county issued the notice and shall be conducted as specified in subdivisions (e) to (k), inclusive. If the individual then fulfills the terms of the conciliation plan, an instance of noncompliance shall not be considered to have occurred. If the individual enters into a written conciliation plan but does not fulfill the terms of the plan, and, pursuant to subdivision (i), it is determined that the individual did not have good cause for failure to meet the terms of the plan, the county shall send a notice of action to impose the sanction. As provided in subdivision (f), the conciliation period shall be terminated and an instance of noncompliance shall not have occurred upon a reversal of the determination that the individual did not have good cause for noncompliance.

(3) If the individual contacts the county and schedules a conciliation appointment, but fails to attend or reschedule the appointment, the county shall contact the individual by phone or in writing, if necessary, to attempt to determine the cause.

(4) If the individual fails to contact the county within 20 calendar days, he or she will be considered to have failed conciliation and the sanction shall be imposed in accordance with Section 11327.5. The sanction shall take effect on the first day of the first payment month following the end of the 20-calendar-day period.

(5) If necessary for the implementation of this subdivision, the department shall seek approval for a waiver from the United States Department of Health and Human Services. The subdivision shall be operative for the duration of any necessary waiver, as specified in the declaration that federal approval for the waiver has been obtained, which the director shall execute and retain.

(e) The notice that begins the conciliation period as required in subdivision (c) or (d) shall identify the specific act or actions that

have caused the individual to be out of compliance with participation requirements under this article, the proposed steps that the registrant may take to resolve the problem, the right to offer a counterproposed conciliation plan, and the names, telephone numbers, and addresses of the local legal services office and welfare rights office, or the Coalition of California Welfare Rights Organizations if there is no welfare rights or legal aid office in the county, who could assist the individual with conciliation. The notice shall also identify the transportation and child care services available to the individual as needed to attend the conciliation meeting and, except for an individual subject to subdivision (d), the date and time of the conciliation appointment.

(f) Any issue that directly affects an individual's failure or refusal to meet program requirements may be discussed during conciliation. This includes providing further information demonstrating the individual had good cause for his or her nonparticipation. The individual also may request a supervisor of employees to review the good cause determination. If, as a result of a supervisor's review, the determination that the individual did not have good cause is reversed, the county shall notify the individual in writing of this reversal and that the conciliation period has been terminated.

(g) In conducting conciliation, the county shall schedule a meeting to discuss and resolve those issues preventing the individual from complying with program requirements. The county shall reschedule the meeting once at the request of the individual.

(h) When the individual and the county reach agreement on program participation during the conciliation period, a written conciliation plan shall be entered into and signed by the county and the individual. If the individual subsequently fulfills the terms of the conciliation plan, conciliation shall be considered successful. The conciliation plan shall specify that the individual must complete, or participate for three months in, the agreed upon activity or activities, whichever is shorter.

(i) If an individual fails to fulfill the terms of the conciliation plan as specified in subdivision (h), the county shall make reasonable efforts during a 10-calendar-day period to contact the individual to determine the reason for the failure, and shall maintain written documentation of those efforts. If the county determines, based on information available to it after making a reasonable effort to contact the individual, that the individual did not have good cause for the failure to meet the terms of the conciliation plan, sanctions shall be imposed in accordance with Section 11327.5.

(j) The county may shorten the 20-calendar-day conciliation period only if one of the following conditions is met:

(1) Both the individual and the county agree, in writing, to terminate conciliation.

(2) The determination of no good cause has been reversed.

(k) If, at the end of the 20-calendar-day conciliation period, the individual continues to fail or refuse to comply with program requirements, sanctions shall be imposed in accordance with Section 11327.5. An additional 10-calendar-day extension of the conciliation period shall be available upon the agreement of the individual and the county only if both of the following conditions are met:

(1) The client has made a reasonable effort to conciliate during the initial 20-calendar-day conciliation period, and significant progress has been made toward a resolution to the dispute during that time.

(2) The county believes that an additional 10 calendar days of conciliation is likely to lead to agreement between the individual and the county on a conciliation plan.

(*l*) For the purpose of determining the length of the sanction that applies to an individual as described in Section 11327.5, an instance of noncompliance without good cause is considered to have occurred when the county issues a notice of action proposing to impose the sanction.

SEC. 17. Section 11328 of the Welfare and Institutions Code is amended to read:

11328. No sanctions shall be applied for a failure or refusal to comply with program requirements with good cause. Good cause for failure or refusal to comply with program requirements shall include all of the following:

(a) An assignment, job referral, or job does not meet appropriate work and training criteria due to any of the following:

(1) The employment, offer of employment, activity or other training for employment discriminates in terms of age, sex, race, religion, ethnic origin, or physical or mental handicap.

(2) The employment or offer of employment, exceeds the daily or weekly hours of work customary to the occupation.

(3) The employment, offer of employment, activity, or other training for employment requires travel to and from the place of employment, activity, or other training and one's home that exceeds a total of two hours in round-trip time, exclusive of the time necessary to transport family members to a school or place providing care, or, when walking is the only available means of transportation, the round-trip is more than two miles, exclusive of the mileage necessary to accompany family members to a school or a place providing care.

(4) The employment, offer of employment, activity, or other training for employment involves conditions and specific responsibilities that impair the individual's physical or mental health or are not related to the individual's capability to perform the task on a regular basis.

(5) The employment, offer of employment, activity, or other training for employment involves conditions that are in violation of applicable health and safety standards.

(6) The employment, offer of employment, or work activity does not provide for worker's compensation insurance.

(7) An employment or training program position utilized pursuant to this article may not be created in violation of Section 11324.2, Section 11324.6, or paragraph (6) of subdivision (g) of Section 11322.8, as applicable.

(8) The employment, offer of employment, activity, or other training is not within the scope of the employment plan as contained in the contract provided for under this article.

(9) Accepting the employment, offer of employment, or work activity would cause the individual to violate the terms of his or her union membership.

(10) Accepting the employment, offer of employment, or work activity would cause an interruption in an approved education or job training program in progress, excluding preemployment preparation as described in subdivision (b) of Section 11322.8 or other community work experience assignments, or would prevent the individual from returning to his or her regular job within a reasonable time, unless the job offer provides either of the following:

(A) Employment and sufficient income to lead to self-support and the job offer is within the scope of the employment plan.

(B) Temporary employment while the individual is waiting for reemployment in his or her regular job.

(11) The participant is not receiving the supportive services agreed to under the contract entered into pursuant to this article.

(12) In addition to good cause as specified in this section, no sanction shall be applied to any participant who is absent or tardy for periods up to 10 percent of the monthly hours required for any component, or the provider's standard. However, this time shall not accumulate.

(13) The employment or offer of employment is at a wage level that results in a net loss of income, in accordance with subdivision (k).

(14) The employment, offer of employment, or required activity requires the individual to remain away from home overnight without his or her consent.

(15) The employment, offer of employment, or required activity exceeds 20 hours per week for parents who are personally providing care for children who are under six years of age. This criterion shall not apply to persons with primary responsibility for personally providing care to children aged three to five years, inclusive, during any period in which subparagraph (D) of paragraph (6) of subdivision (b) of Section 11320.3 is implemented, as specified in the declaration executed by the director upon federal approval for implementation of that subparagraph.

(b) The individual is temporarily physically incapacitated or suffers temporary physical illness.

(c) The individual is required to appear in a court proceeding or is incarcerated.

(d) The individual is suffering a family crisis or changed individual family circumstance as evidenced, for example, by the death of a spouse, parent, or child or an illness of a spouse, parent, or child which requires the individual's immediate attention.

(e) Inclement weather or other act of nature precludes the individual and other persons similarly situated from traveling to an activity.

(f) There is a breakdown in transportation arrangements with no ready access to alternate transportation.

(g) The individual needs any other necessary social service not specifically mentioned in his or her contract.

(h) An individual refuses to accept major medical services even if the refusal precludes participation in the program.

(i) Licensed or exempt child care is not reasonably available, or is not reasonably available during the individual's hours of training or employment including commuting time, or arrangements for child care have broken down or have been interrupted, or child care is needed for a child who meets the criteria of paragraph (1) of subdivision (a) of Section 11323.2 but who is not included in the assistance unit. For purposes of this section, "reasonably available" means having at least two choices of child care arrangements. The choices of day care shall meet either licensing requirements or the requirements of Section 11324. This good cause criterion shall include the unavailability of suitable special needs child care for children with identified special needs, including, but not limited to, disabilities or chronic illnesses.

(j) An individual is engaged in employment or training that is consistent with the employability objectives of the program, and prior notification and approval from the worker has been received.

(k) Net loss of income would occur pursuant to the conditions provided for in this subdivision, if an offer of employment which results in a net income of less than 100 percent of a person's grant is accepted. Net loss of income shall be deemed to occur when current income is greater than the postemployment income would be if the job offer were accepted. "Postemployment income" means gross income less necessary work-related expenses as follows: mandatory and legal deductions from the proposed salary, transportation, and child care including the child care share of cost for individuals eligible for transitional child care. Gross income and work-related expenses shall be defined so as to ensure receipt of federal financial participation.

For purposes of computing postemployment income, the regional market rate for child care, transportation, and other mandatory work-related expenses shall be used. Regional market rates for child care shall be determined in accordance with the Alternative Payment Program as provided for under Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code.

(*l*) Any other substantial and compelling reason not specified in this section, to be determined at the discretion of the county.

SEC. 18. Section 11329.2 of the Welfare and Institutions Code is amended to read:

11329.2. (a) The department shall seek any federal funds available for implementation of this article, including, but not limited to, funds available under Title IV of the federal Social Security Act (42 U.S.C. Sec. 601 et seq.) for the Employment Search Program and the Community Work Experience Program.

(b) (1) The department shall seek any waiver from the Secretary of the United States Department of Health and Human Services which is necessary to implement this article.

(2) Any provision of this article that may only be implemented pursuant to a waiver from the United States Department of Health and Human Services shall only be operative during the period for which the waiver is granted, as stated in a declaration that shall be executed by the director when the waiver is obtained.

SEC. 19. Section 11330.1 of the Welfare and Institutions Code is amended to read:

11330.1. (a) Custodial parents 16 or 17 years of age who are required to register pursuant to Section 11320.3 shall be required to participate in the program, subject to both of the following requirements:

(1) The custodial parent shall participate in the program until the registrant earns his or her high school diploma or its equivalent.

(2) The custodial parent shall participate in the program as a student attending school on a full-time basis, as normally defined by the program in which the participant enrolls.

(b) For the purposes of this article, "teen" or "teenage parent" means a custodial parent under 18 years of age, who is required to register pursuant to Section 11320.3.

SEC. 20. Section 11331.5 of the Welfare and Institutions Code is amended to read:

11331.5. (a) Recipients of aid under this chapter who are under 19 years of age, who are pregnant or custodial parents, and who are required to register pursuant to Section 11320.3 shall be required to participate in the program, subject to both of the following requirements:

(1) The teenage parent shall participate in the program until the registrant earns his or her high school diploma or its equivalent.

(2) The teenage parent shall participate in the program as a student attending school on a full-time basis, as normally defined by the school in which the participant enrolls.

(b) For the purpose of subdivision (a), exemptions from registration specified in paragraphs (1), (2), (4), (5), (6), (7), and (8) of subdivision (b) of Section 11320.3 and the deferrals from participation in Section 11325 shall not apply.

(c) Notwithstanding subdivision (a), the county shall exempt a teenage parent from the program as verified by the county when any of the following conditions occur:

(1) The teenage parent is expelled from school and obtains verification that no other school in the district will permit him or her to attend, and the case manager cannot arrange for enrollment in an alternative school.

(2) The teenage parent cannot receive payment for child care or transportation expenses due to lack of program funding.

(3) Child care is necessary and unavailable.

(4) Public or private transportation is necessary and unavailable.

(5) An AFDC-FC payment is made on behalf of the teenage parent.

(d) For the purposes of this article, "teen" or "teenage parent" means a custodial parent or pregnant woman under 19 years of age, who is required to participate pursuant to subdivision (a).

SEC. 21. Section 11334 of the Welfare and Institutions Code is amended to read:

11334. Upon graduation from high school, participants shall not be entitled to exemption from GAIN pursuant to paragraph (6) of subdivision (b) of Section 11320.3.

SEC. 22. Article 9 (commencing with Section 11520) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 23. If any provisions of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to the extent that provisions of this act are found to be out of conformity with the requirements of federal law, the provision shall be implemented to the maximum extent permitted by federal law.

SEC. 24. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 23. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that changes are made to the Greater Avenues for Independence program which will ensure the effective

administration of that program, at the earliest possible time, it is necessary that this act go into effect immediately.

CHAPTER 884

An act to amend Section 8704 of, to repeal and add Part 6 (commencing with Section 7950) of Division 12 of, to repeal and add Sections 8708, 8709, and 8710 of, and to add Section 8711.5 to, the Family Code, and to amend Section 361.2 of the Welfare and Institutions Code, relating to family law.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Part 6 (commencing with Section 7950) of Division 12 of the Family Code is repealed.

SEC. 2. Part 6 (commencing with Section 7950) is added to Division 12 of the Family Code, to read:

PART 6. FOSTER CARE PLACEMENT CONSIDERATIONS

7950. (a) With full consideration for the proximity of the natural parents to the placement so as to facilitate visitation and family reunification, when a placement in foster care is being made, the following considerations shall be used:

(1) Placement shall, if possible, be made in the home of a relative, unless the placement would not be in the best interest of the child. Diligent efforts shall be made to locate an appropriate relative. Before any child may be placed in long-term foster care, each relative whose name has been submitted to the agency as a possible caretaker, either by himself or herself or by other persons, shall be evaluated as an appropriate placement resource.

(2) No agency or entity that receives any state assistance and is involved in foster care placements may do either of the following:

(A) Categorically deny to any person the opportunity to become a foster parent, solely on the basis of the race, color, or national origin of the foster parent or the child involved.

(B) Delay or deny the placement of a child in foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color, or national origin of the foster parent or the child involved.

(b) An agency or entity to which subdivision (a) applies may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster parents to meet the needs of

a child of this background as one of a number of factors used to determine the best interest of a child.

(c) As used in the section, "placement decision" means the decision to place, or to delay or deny the placement, of a child in a foster care home.

(d) Nothing in this section precludes a search for an appropriate relative being conducted simultaneously with a search for a foster family.

7951. This part does not apply in determining the foster care setting in which the child may be placed for a period not intended to exceed 30 days.

7952. A minor 10 years of age or older being considered for placement in a foster home has the right to make a brief statement to the court making a decision on placement. The court may disregard any preferences expressed by the minor. The minor's right to make a statement is not limited to the initial placement, but continues for any proceedings concerning continued placement or a decision to return to parental custody.

SEC. 3. Section 8704 of the Family Code is amended to read:

8704. (a) The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights is responsible for the care of the child, and is entitled to the exclusive custody and control of the child until an order of adoption is granted. Any placement for temporary care, or for adoption, made by the department or a licensed adoption agency may be terminated in its discretion at any time before the granting of an order of adoption. In the event of termination of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the department or licensed adoption agency.

(b) No petition may be filed to adopt a child relinquished to the department or a licensed adoption agency or a child declared free from the custody and control of either or both birth parents and referred to the department or a licensed adoption agency for adoptive placement, except by the prospective adoptive parents with whom the child has been placed for adoption by the department or licensed adoption agency. After the adoption petition has been filed, the department or licensed adoption agency may remove the child from the prospective adoptive parents only with the approval of the court, upon motion by the department or licensed adoption agency after notice to the prospective adoptive parents, supported by an affidavit or affidavits stating the grounds on which removal is sought. If the department or licensed adoption agency refuses to consent to the adoption of a child by the person or persons with whom the department or licensed adoption agency placed the child for adoption, the court may nevertheless order the adoption if it finds that the refusal to consent is not in the child's best interest.

SEC. 3.5. Section 8708 of the Family Code is repealed.

SEC. 4. Section 8708 is added to the Family Code, to read:

8708. Neither the department nor a licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights may do either of the following:

(a) Categorically deny to any person the opportunity to become an adoptive parent, solely on the basis of the race, color, or national origin of the adoptive parent or the child involved.

(b) Delay or deny the placement of a child for adoption, or otherwise discriminate in making an adoptive placement decision, solely on the basis of the race, color, or national origin of the adoptive parent or the child involved.

SEC. 5. Section 8709 of the Family Code is repealed.

SEC. 6. Section 8709 is added to the Family Code, to read:

8709. The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective adoptive parent to meet the needs of a child of this background as one of a number of factors used to determine the best interest of a child. The child's religious background may also be considered in determining an appropriate placement.

As used in this section, "placement decision" means the decision to place, or to delay or deny the placement of a child, in an adoptive home, and includes the decision to seek termination of parental rights or otherwise make a child legally available for adoptive placement.

SEC. 7. Section 8710 of the Family Code is repealed.

SEC. 8. Section 8710 is added to the Family Code, to read:

8710. Where a child is being considered for adoption, the department or licensed adoption agency shall first consider adoptive placement in the home of a relative. However, if a relative is not available, if placement with an available relative is not in the child's best interest, or if placement would permanently separate the child from other siblings who are being considered for adoption or who are in foster care and an alternative placement would not require the permanent separation, the foster parent or parents of the child shall be considered with respect to the child along with all other prospective adoptive parents where all of the following conditions are present:

(a) The child has been in foster care with the foster parent or parents for a period of more than four months.

(b) The child has substantial emotional ties to the foster parent or parents.

(c) The child's removal from the foster home would be seriously detrimental to the child's well-being.

(d) The foster parent or parents have made a written request to be considered to adopt the child.

This section does not apply to a child who has been adjudged a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

SEC. 9. Section 8711.5 is added to the Family Code, to read:

8711.5. The department shall adopt regulations to administer the provisions of Sections 8708 to 8711, inclusive.

SEC. 10. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a minor pursuant to Section 361, the court shall first determine whether there is a parent of the minor, with whom the minor was not residing at the time that the events or conditions arose that brought the minor within the provisions of Section 300, who desires to assume custody of the minor. If such a parent requests custody the court shall place the minor with the parent unless it finds that placement with that parent would be detrimental to the minor.

(b) If the court places the minor with such a parent it may do either of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the minor. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In such a case the court may order that reunification services be provided to the parent or guardian from whom the minor is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the minor.

(c) The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).

(d) Part 6 (commencing with Section 7950) of Division 12 of the Family Code shall apply to the placement of a minor pursuant to paragraphs (1) and (2) of subdivision (e).

(e) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(6) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(f) (1) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parents' or guardians' county of residence, a

placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parents or guardians. In determining whether the minor should be moved, the probation officer shall take into consideration the potential harmful effects of disrupting the placement of the minor and the parents' or guardians' reason for the move.

(4) When it has been determined that it is necessary for a minor to be placed in a county other than the minor's parents' or guardians' county of residence, the specific reason the out-of-county placement is necessary shall be documented in the minor's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the minor, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a minor is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the minor, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the minor, shall be made available to the receiving county upon placement of the minor in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a minor is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the minor, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the minor, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the minor in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the

completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern to the receiving county.

(g) Whenever the probation officer must change the placement of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, the placement shall not be made until he or she has served written notice on the parents or guardians at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parents or guardians may object to the placement not later than seven days after receipt of the notice and, upon objection the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the minor's particular needs require placement outside the county.

(h) Where the court has ordered a minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(i) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the minor will be served by granting visitation rights to the minor's grandparents. The court shall clearly specify those rights to the supervising probation officer.

SEC. 11. (a) The State Department of Social Services may adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement applicable provisions of this act.

(b) Any regulation adopted by the State Department of Social Services pursuant to subdivision (a) that is filed with the Office of

Administrative Law within one year of the effective date of this act shall be deemed to be an emergency regulation, and necessary for the immediate preservation of the public peace, health, or safety.

CHAPTER 885

An act to amend Sections 1871, 1872.83, 1877.3, 11760, and 11880 of the Insurance Code, relating to insurance.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 1871 of the Insurance Code is amended to read:

1871. The Legislature finds and declares as follows:

(a) That the business of insurance involves many transactions which have potential for abuse and illegal activities. There are numerous law enforcement agencies on the state and local levels charged with the responsibility for investigating and prosecuting fraudulent activity. This chapter is intended to permit the full utilization of the expertise of the commissioner and the department so that they may more effectively investigate and discover insurance frauds, halt fraudulent activities, and assist and receive assistance from federal, state, local, and administrative law enforcement agencies in prosecution of persons who are parties in insurance frauds.

(b) That insurance fraud is a particular problem for automobile policyholders; fraudulent activities account for 15 to 20 percent of all auto insurance payments. Automobile insurance fraud is the biggest and fastest growing segment of insurance fraud and contributes substantially to the high cost of automobile insurance with particular significance in urban areas.

(c) That prevention of automobile insurance fraud will significantly reduce the incidence of severity and automobile insurance claim payments and will therefore produce a commensurate reduction in automobile insurance premiums.

(d) That workers' compensation fraud harms employers by contributing to the increasingly high cost of workers' compensation insurance and self-insurance and harms employees by undermining the perceived legitimacy of all workers' compensation claims.

(e) That prevention of workers' compensation insurance fraud may reduce the number of workers' compensation claims and claim payments thereby producing a commensurate reduction in workers' compensation costs. Prevention of workers' compensation insurance fraud will assist in restoring confidence and faith in the workers'

compensation system, and will facilitate expedient and full compensation for employees injured at the workplace.

(f) That the actions of employers who fraudulently underreport payroll or fail to report payroll for all employees to their insurance company in order to pay a lower workers' compensation premium result in significant additional premium costs and an unfair burden to honest employers and their employees.

(g) That health insurance fraud is a particular problem for health insurance policyholders. Although there are no precise figures, it is believed that fraudulent activities account for billions of dollars annually in added health care costs nationally. Health care fraud causes losses in premium dollars and increases health care costs unnecessarily.

SEC. 2. Section 1872.83 of the Insurance Code, as amended by Chapter 168 of the Statutes of 1995, is amended to read:

1872.83. (a) The commissioner shall ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880, in subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Bureau of Fraudulent Claims shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of five members consisting of two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the members appointed by the Governor shall expire, respectively, on December 31, 1992, December 31, 1993, and December 31, 1994. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars ($100) for each day of actual attendance at commission meetings and other official commission business, and shall also

receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Bureau of Fraudulent Claims and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced workers' compensation fraud investigation and prosecution as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, and Section 549 of the Penal Code, not be less than three million dollars ($3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision. In no case may that money be transferred to the General Fund.

(d) After incidental expenses, 50 percent of the funds to be used for the purposes of this section shall be provided to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts and 50 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the bureau and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation insurance fraud cases. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail their proposed use of any funds provided. Any district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of their efforts. Upon receipt, the commissioner shall provide copies to the bureau and the Fraud Assessment Commission of any application, annual report, or other documents

with respect to the allocation of money pursuant to this subdivision. These documents shall be public records.

(e) If any district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision, which funds may be in addition to any other fraud prosecution funds otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) No county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud shall become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Bureau of Fraudulent Claims does not use all of the funds made available to it under subdivision (d), the

unexpended funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and regulations to implement this section in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the state to fight fraud by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.

SEC. 2.5. Section 1872.83 of the Insurance Code, as amended by Chapter 168 of the Statutes of 1995, is amended to read:

1872.83. (a) The commissioner shall ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880, in subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Bureau of Fraudulent Claims shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of five members consisting of two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing self-insured employers, insured employers, and insurers. The term of office of

members of the commission shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the members appointed by the Governor shall expire, respectively, on December 31, 1992, December 31, 1993, and December 31, 1994. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars ($100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Bureau of Fraudulent Claims and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced workers' compensation fraud investigation and prosecution as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, and Section 549 of the Penal Code, not be less than three million dollars ($3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision. In no case may that money be transferred to the General Fund.

(d) After incidental expenses, 50 percent of the funds to be used for the purposes of this section shall be provided to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts and 50 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the bureau and the Fraud Assessment Commission, as to the most effective distribution

of moneys for purposes of the investigation and prosecution of workers' compensation insurance fraud cases. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail the proposed use of any funds provided. A district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of his or her efforts. Upon receipt, the commissioner shall provide copies to the bureau and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. These documents shall be public records.

(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner

determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) No county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud shall become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Bureau of Fraudulent Claims does not use all of the funds made available to it under subdivision (d), the unexpended funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and regulations to implement this section in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) The department shall report on an annual basis to the Legislature and the Fraud Assessment Commission on the activities of the Bureau of Fraudulent Claims and local district attorneys supported by the funds provided by this section.

The annual report shall include, but is not limited to, all of the following information for the department and each district attorney's office:

(1) All allocations, distributions, and expenditures of funds.

(2) The number of search warrants issued.

(3) The number of arrests, and prosecutions, and the aggregate number of parties involved in each.

(4) The number of convictions, and names of all convicted fraud perpetrators.

(5) The estimated value of all assets frozen, penalties assessed, and restitutions made for each conviction.

(6) Any additional items necessary to fully inform the Fraud Assessment Commission and the Legislature of the fraud-fighting efforts financed through this section.

(i) In order to meet the requirements of subdivision (g), the department shall submit a biannual information request to those district attorneys who have applied for and received funding through the annual assessment process under this section.

(j) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the state to fight fraud by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from

assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.

SEC. 3. Section 1877.3 of the Insurance Code is amended to read:

1877.3. (a) Upon written request to an insurer by an authorized governmental agency, an insurer, or agent authorized by that insurer to act on behalf of the insurer, shall release to the requesting authorized governmental agency any or all relevant information deemed important to the authorized governmental agency that the insurer may possess relating to any specific workers' compensation insurance fraud investigation.

(b) (1) When an insurer knows or reasonably believes it knows the identity of a person or entity whom it has reason to believe committed a fraudulent act relating to a workers' compensation insurance claim or a workers' compensation insurance policy, including any policy application, or has knowledge of such a fraudulent act that is reasonably believed not to have been reported to an authorized governmental agency, then, for the purpose of notification and investigation, the insurer, or agent authorized by an insurer to act on its behalf, shall notify the local district attorney's office and the Bureau of Fraudulent Claims of the Department of Insurance, and may notify any other authorized governmental agency of that suspected fraud and provide any additional information in accordance with subdivision (a). The insurer shall state in its notice the basis of the suspected fraud.

(2) Insurers shall use a form prescribed by the department for the purposes of reporting suspected fraudulent workers' compensation acts pursuant to this subdivision.

(3) Nothing in this subdivision shall abrogate or impair the rights or powers created under subdivision (a).

(c) The authorized governmental agency provided with information pursuant to subdivision (a), (b), or (e) may release or provide that information in a confidential manner to any other authorized governmental agency for purposes of investigation, prosecution, or prevention of insurance fraud or workers' compensation fraud.

(d) An insurer providing information to an authorized governmental agency pursuant to this section shall provide the information within a reasonable time, but not to exceed 30 days from the day on which the duty arose.

(e) Upon written request by an authorized governmental agency, as specified in subdivision (t) of Section 1095 of the Unemployment Insurance Code, the Employment Development Department shall release to the requesting agency any or all relevant information that the Employment Development Department may possess relating to

any specific workers' compensation insurance fraud investigation. Relevant information may include, but is not limited to, all of the following:

(1) Copies of unemployment and disability insurance application and claim forms and copies of any supporting medical records, documentation, and records pertaining thereto.

(2) Copies of returns filed by an employer pursuant to Section 1088 of the Unemployment Insurance Code and copies of supporting documentation.

(3) Copies of benefit payment checks issued to claimants.

(4) Copies of any documentation that specifically identifies the claimant by social security number, residence address, or telephone number.

SEC. 4. Section 11760 of the Insurance Code is amended to read:

11760. (a) It is unlawful to make or cause to be made any knowingly false or fraudulent statement, whether made orally or in writing, of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance, for the purpose of reducing the premium, rate, or cost of the insurance. Any person convicted of violating this subdivision shall be punished by imprisonment in the county jail for one year, or in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000), or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

(b) Any person who violates subdivision (a) and who has a prior felony conviction of the offense set forth in that subdivision shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (a). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 5. Section 11880 of the Insurance Code is amended to read:

11880. (a) It is unlawful to make or cause to be made any knowingly false or fraudulent statement, whether made orally or in writing, of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance issued or administered by the State Compensation Insurance Fund for the purpose of reducing the premium, rate, or cost of the insurance. Any person convicted of violating this subdivision shall be punished by imprisonment in the county jail for one year, or in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000), or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

(b) Any person who violates subdivision (a) and who has a prior felony conviction of the offense set forth in that subdivision shall

receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (a). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 1872.83 of the Insurance Code proposed by both this bill and SB 619. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1996, (2) each bill amends Section 1872.83 of the Insurance Code, and (3) this bill is enacted after SB 619, in which case Section 2 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 886

An act to amend Section 51769 of the Education Code, to amend Section 1872.83 of the Insurance Code, and to amend Sections 3201.5 and 3217 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 51769 of the Education Code is amended to read:

51769. (a) Notwithstanding any provision of this code or the Labor Code to the contrary, the school district, county superintendent of schools, or any school administered by the State Department of Education under whose supervision work experience education, cooperative vocational education or community classrooms as defined by regulations adopted by the Superintendent

of Public Instruction, or a job shadowing experience, as defined in subdivision (b), are provided shall be considered the employer under Division 4 (commencing with Section 3200) of the Labor Code of persons receiving this training unless the persons during the training are being paid a cash wage or salary by a private employer, or unless the person or firm under whom the persons are receiving work experience or occupational training elects to provide workers' compensation insurance. An apprentice, while attending related and supplemental instruction classes, shall be considered to be in the employ of the apprentice's employer and not subject to this section, unless the apprentice is unemployed. Whenever this work experience education, cooperative vocational education, community classroom education, or job shadowing, is under the supervision of a regional occupational center or program operated by two or more school districts pursuant to Section 52301, the district of residence of the persons receiving the training shall be deemed the employer for the purposes of this section.

(b) For purposes of this section, "job shadowing experience" means a visit to a work place for the purpose of career exploration for no less than three hours and no more than 25 hours in one semester, intersession, or summer school session.

SEC. 2. Section 1872.83 of the Insurance Code, as amended by Chapter 168 of the Statutes of 1995, is amended to read:

1872.83. (a) The commissioner shall ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in subdivision (a) of Section 1871.4 and Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Bureau of Fraudulent Claims shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of five members consisting of two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall

hold office until the appointment of a successor. However, the initial terms of three of the members appointed by the Governor shall expire, respectively, on December 31, 1992, December 31, 1993, and December 31, 1994. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars ($100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Bureau of Fraudulent Claims and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Section 1871.4 and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced workers' compensation fraud investigation and prosecution as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Section 1871.4 and Section 549 of the Penal Code, not be less than three million dollars ($3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision. In no case may that money be transferred to the General Fund.

(d) After incidental expenses, 50 percent of the funds to be used for the purposes of this section shall be provided to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts and 50 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the bureau and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of

workers' compensation insurance fraud cases. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail the proposed use of any funds provided. A district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of his or her efforts. Upon receipt, the commissioner shall provide copies to the bureau and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. These documents shall be public records.

(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) No county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud shall become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Bureau of Fraudulent Claims does not use all of the funds made available to it under subdivision (d), any remaining funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and regulations to implement this section in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) The department shall report on an annual basis to the Legislature and the Fraud Assessment Commission on the activities of the Bureau of Fraudulent Claims and local district attorneys supported by the funds provided by this section.

The annual report shall include, but is not limited to, all of the following information for the department and each district attorney's office:

(1) All allocations, distributions, and expenditures of funds.

(2) The number of search warrants issued.

(3) The number of arrests, and prosecutions, and the aggregate number of parties involved in each.

(4) The number of convictions, and names of all convicted fraud perpetrators.

(5) The estimated value of all assets frozen, penalties assessed, and restitutions made for each conviction.

(6) Any additional items necessary to fully inform the Fraud Assessment Commission and the Legislature of the fraud-fighting efforts financed through this section.

(i) In order to meet the requirements of subdivision (g), the department shall submit a biannual information request to those district attorneys who have applied for and received funding through the annual assessment process under this section.

SEC. 2.5. Section 1872.83 of the Insurance Code, as amended by Chapter 168 of the Statutes of 1995, is amended to read:

1872.83. (a) The commissioner shall ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880, in subdivision (a) of Section 1871.4, and in Section 549 of

the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Bureau of Fraudulent Claims shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of five members consisting of two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the members appointed by the Governor shall expire, respectively, on December 31, 1992, December 31, 1993, and December 31, 1994. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars ($100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Bureau of Fraudulent Claims and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the

Legislature, only for enhanced workers' compensation fraud investigation and prosecution as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, and Section 549 of the Penal Code, not be less than three million dollars ($3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision. In no case may that money be transferred to the General Fund.

(d) After incidental expenses, 50 percent of the funds to be used for the purposes of this section shall be provided to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts and 50 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the bureau and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation insurance fraud cases. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail the proposed use of any funds provided. A district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of his or her efforts. Upon receipt, the commissioner shall provide copies to the bureau and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. These documents shall be public records.

(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud

Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) No county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud shall become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Bureau of Fraudulent Claims does not use all of the funds made available to it under subdivision (d), any remaining funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and regulations to implement this section in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) The department shall report on an annual basis to the Legislature and the Fraud Assessment Commission on the activities of the Bureau of Fraudulent Claims and local district attorneys supported by the funds provided by this section.

The annual report shall include, but is not limited to, all of the following information for the department and each district attorney's office:

(1) All allocations, distributions, and expenditures of funds.

(2) The number of search warrants issued.

(3) The number of arrests, and prosecutions, and the aggregate number of parties involved in each.

(4) The number of convictions, and names of all convicted fraud perpetrators.

(5) The estimated value of all assets frozen, penalties assessed, and restitutions made for each conviction.

(6) Any additional items necessary to fully inform the Fraud Assessment Commission and the Legislature of the fraud-fighting efforts financed through this section.

(i) In order to meet the requirements of subdivision (g), the department shall submit a biannual information request to those district attorneys who have applied for and received funding through the annual assessment process under this section.

(j) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the state to fight fraud by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.

SEC. 3. Section 3201.5 of the Labor Code is amended to read:

3201.5. (a) Except as provided in subdivisions (b) and (c), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any provision in a collective bargaining agreement between a private employer or groups of employers engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying, and construction inspection and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(1) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the

appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

(2) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

(3) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.

(4) Joint labor management safety committees.

(5) A light-duty, modified job or return-to-work program.

(6) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.

(b) Nothing in this section shall allow a collective bargaining agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division. The portion of any agreement that violates this subdivision shall be declared null and void.

(c) Subdivision (a) shall apply only to the following:

(1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars ($250,000) or more, or any employer that paid an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars ($250,000) in at least one of the previous three years.

(2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, which develops or projects annual workers' compensation insurance premiums of two million dollars ($2,000,000) or more.

(3) Employers or groups of employers that are self-insured in compliance with Section 3700 that would have projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.

(4) Employers covered by an owner or general contractor provided wrap-up insurance policy applicable to a single construction site that develops workers' compensation insurance premiums of two million dollars ($2,000,000) or more with respect to those employees covered by that wrap-up insurance policy.

(d) Employers and labor representatives who meet the eligibility requirements of this section shall be issued a letter by the administrative director advising each employer and labor representative that, based upon the review of all documents and materials submitted as required by the administrative director, each has met the eligibility requirements of this section.

(e) The premium rate for a policy of insurance issued pursuant to this section shall not be subject to the requirements of Section 11732 or 11732.4 of the Insurance Code.

(f) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:

(1) Upon its original application and whenever it is renegotiated thereafter, a copy of the collective bargaining agreement and the approximate number of employees who will be covered thereby.

(2) Upon its original application and annually thereafter, a valid and active license where that license is required by law as a condition of doing business in the state within the industries set forth in subdivision (a) of Section 3201.5.

(3) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement.

(4) The name, address, and telephone number of the contact person of the employer.

(5) Any other information that the administrative director deems necessary to further the purposes of this section.

(g) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:

(1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.

(2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.

(h) Commencing July 1, 1995, and annually thereafter, the Division of Workers' Compensation shall report to the Director of the Department of Industrial Relations the number of collective bargaining agreements received and the number of employees covered by these agreements.

(i) By June 30, 1996, and annually thereafter, the Administrative Director of the Division of Workers' Compensation shall prepare and notify Members of the Legislature that a report authorized by this section is available upon request. The report based upon aggregate data shall include the following:

(1) Person hours and payroll covered by agreements filed.

(2) The number of claims filed.

(3) The average cost per claim shall be reported by cost components whenever practicable.

(4) The number of litigated claims, including the number of claims submitted to mediation, the appeals board, or the court of appeals.

(5) The number of contested claims resolved prior to arbitration.

(6) The projected incurred costs and actual costs of claims.

(7) Safety history.

(8) The number of workers participating in vocational rehabilitation.

(9) The number of workers participating in light-duty programs.

The division shall have the authority to require those employers and groups of employers listed in subdivision (c) to provide the data listed above.

(j) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivisions (h) and (i) based on the collective bargaining agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis the administrative director shall make available an updated list of employers and unions entering into collective bargaining agreements containing provisions authorized by this section.

SEC. 4. Section 3217 of the Labor Code is amended to read:

3217. (a) Section 3215 shall not be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by the Rules of Professional Conduct of the State Bar.

(b) Section 3215 shall not be construed to prohibit a public defender or assigned counsel from making known his or her availability as a criminal defense attorney to persons unable to afford legal counsel, whether or not those persons are in custody.

(c) Any person who commits an act that violates both Section 3215 and either Section 650 of the Business and Professions Code or Section 750 of the Insurance Code shall, upon conviction, have judgment and sentence imposed for only one violation for any act.

(d) Section 3215 shall not be construed to prohibit the payment or receipt of consideration or services that is lawful pursuant to Section 650 of the Business and Professions Code.

(e) Notwithstanding Sections 3215 and 3219, and Section 750 of the Insurance Code, nothing shall prevent an attorney at law or a law firm from providing any person or entity with legal advice, information, or legal services, including the providing of printed, copied, or written documents, either without charge or for an otherwise lawfully agreed upon attorney fee.

(f) Section 3215 shall not be construed to prohibit a workers' compensation insurer from offering, and an employer from accepting, a workers' compensation insurance policy with rates that reflect premium discounts based upon the employer securing coverage for occupational or nonoccupational illnesses or injuries from a health care service plan or disability insurer that is owned by, affiliated with, or has a contractual relationship with, the workers' compensation insurer.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 1872.83 of the Insurance Code proposed by both this bill and SB 1053. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1996, (2) each bill amends Section 1872.83 of the Insurance Code, and (3) this bill is enacted after SB 1053, in which case Section 2 of this bill shall not become operative.

CHAPTER 887

An act to amend Section 49116 of the Education Code and Sections 1286, 1288, 1294.1, 1294.3, 1294.4, 1305, 1308, 1308.3, 1309.6, 1391, and 1393 of the Labor Code, relating to employment.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 49116 of the Education Code is amended to read:

49116. (a) While school is in session, an employer shall not employ a minor 14 or 15 years of age for more than three hours in any day, nor more than 18 hours in any week, nor during school hours, except that a minor enrolled in and employed pursuant to a school-supervised and school-administered work experience and career exploration program may be employed for no more than 23 hours, any portion of which may be during school hours.

(b) An employer shall not employ a minor 16 or 17 years of age for more than four hours in any day in which that minor is required by law to attend school for 240 minutes or more, except as follows:

(1) The minor is employed in personnel attendance occupations, as defined in the Industrial Welfare Commission Minimum Wage Order No. 15, school-approved work experience, or cooperative vocational education programs.

(2) The minor has been issued a permit to work pursuant to subdivision (c) of Section 49112 and is employed in accordance with the provisions of that permit.

(c) If evidence is shown, to the satisfaction of the authority issuing the permit to work, that the schoolwork or the health of the minor is being impaired by the employment, that authority may revoke the permit.

(d) Nothing in this section shall apply to any minor employed to deliver newspapers to consumers.

SEC. 2. Section 1286 of the Labor Code is amended to read:

1286. As used in this article:

(a) "Director" means the Director of Industrial Relations or his or her designee.

(b) "Department" means the Department of Industrial Relations.

(c) "Minor" means any person under the age of 18 years who is required to attend school under Chapter 2 (commencing with Section 48200) and Chapter 3 (commencing with Section 48400) of Part 27 of the Education Code and any person under the age of six years. A person under the age of 18 years who is not required to attend school under Chapter 2 (commencing with Section 48200) and Chapter 3 (commencing with Section 48400) of Part 27 of the Education Code solely because that person is a nonresident of California shall still be considered a minor.

(d) "Labor Commissioner" means the Chief of the Division of Labor Law Enforcement, his or her deputies or agents, who shall have the authority to conduct informal hearings and determine the amount of civil penalties in accordance with this article.

(e) "Door-to-door sales" has the same meaning as "home solicitation contract or offer," as defined in subdivision (a) of Section 1689.5 of the Civil Code, except that "door-to-door sales" is not subject to the minimum monetary limitation set forth in that subdivision.

SEC. 3. Section 1288 of the Labor Code is amended to read:

1288. Citations issued pursuant to this article shall be classified according to the nature of the violation, and shall indicate the classification on the face thereof, as follows:

(a) Class "A" violations are violations of Section 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1308, 1308.1, or 1392, and any other violations that the director determines present an imminent danger to minor employees or a substantial probability that death or serious physical harm would result therefrom. The violation of Section 1391 for the third or subsequent time shall also constitute a class "A" violation. A physical condition or one or more practices, means, methods, or operations in use in a place of employment may constitute a violation. A class "A" violation is subject to a civil penalty in an amount not less than five thousand dollars ($5,000) and not exceeding ten thousand dollars ($10,000) for each and every violation. Willful or repeated violations shall receive higher civil penalties than those imposed for comparable nonwillful or first violations, not to exceed ten thousand dollars ($10,000).

(b) Class "B" violations are violations of Section 1299 or 1308.5, or a violation of Section 1391 for the first and second time, and those other violations that the director determines have a direct or immediate relationship to the health, safety, or security of minor employees, other than class "A" violations. A class "B" violation is subject to a civil penalty in an amount not less than five hundred dollars ($500) and not to exceed one thousand dollars ($1,000) for each and every violation. Willful or repeated violations shall receive higher civil penalties than those imposed for comparable nonwillful or first violations. A second violation of Section 1391 shall be subject to a civil penalty of one thousand dollars ($1,000).

(c) Nothing in this section shall preclude the imposition of criminal penalties provided for in this chapter.

SEC. 4. Section 1294.1 of the Labor Code is amended to read:

1294.1. (a) No minor under the age of 16 years shall be employed or permitted to work in either of the following:

(1) Any occupation declared particularly hazardous for the employment of minors below the age of 16 years in Section 570.71 of Subpart E-1 of Part 570 of Title 29 of the Code of Federal Regulations, as that regulation may be revised from time to time.

(2) Any occupation excluded from the application of Subpart C of Part 570 of Title 29 of the Code of Federal Regulations, as set forth in Section 570.33 and paragraph (b) of Section 570.34 thereof, as those regulations may be revised from time to time.

(b) No minor shall be employed or permitted to work in any occupation declared particularly hazardous for the employment of minors between 16 and 18 years of age, or declared detrimental to their health or well-being, in Subpart E of Part 570 of Title 29 of the Code of Federal Regulations, as those regulations may be revised from time to time.

(c) Nothing in this section shall prohibit a minor engaged in the processing and delivery of newspapers from entering areas of a newspaper plant, other than areas where printing presses are located, for purposes related to the processing or delivery of newspapers.

SEC. 5. Section 1294.3 of the Labor Code is amended to read:

1294.3. Minors 14 and 15 years of age may be employed in occupations not otherwise prohibited by this chapter, including, but not limited to, the following:

(a) Office and clerical work, including the operation of office machines.

(b) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping.

(c) Price marking and tagging by hand or by machine, assembling orders, packing and shelving.

(d) Bagging and carrying out customers' orders.

(e) Errand and delivery work by foot, bicycle, and public transportation.

(f) Cleanup work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of power-driven mowers or cutters.

(g) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of this work, including, but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milkshake blenders, and coffee grinders.

(h) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing, and stocking goods when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers.

SEC. 6. Section 1294.4 of the Labor Code is amended to read:

1294.4. Nothing in this chapter shall be construed to prohibit a minor engaged in the delivery of newspapers to consumers from making deliveries by foot, bicycle, public transportation, or by an automobile driven by a person 16 years of age or older.

SEC. 7. Section 1305 of the Labor Code is amended to read:

1305. (a) All fines and penalties collected under this article, other than as the result of a judicial proceeding to enforce collection, shall be paid to the department in the form of remittances payable to the Department of Industrial Relations. The department shall transmit the payments to the State Treasury and the payments shall be credited to the General Fund.

(b) Notwithstanding Section 1463 of the Penal Code, all fines and penalties collected in judicial proceedings to enforce their collection, except for the civil penalties that are assessed and collected pursuant to Sections 1287, 1288, and 1289, shall be allocated pursuant to court order. The court shall direct that 50 percent of the fines and penalties assessed shall be transmitted to the county treasury, if prosecuted by the district attorney or the county counsel, or to the city treasury, if prosecuted by the city attorney, 25 percent of the fines and penalties assessed shall be transmitted to the Department of Industrial Relations to be available, upon appropriation by the Legislature, for the purpose of recovering costs incurred by the department pursuant to this chapter, and 25 percent of the fines and penalties assessed be transmitted to the Treasurer for deposit in the State Treasury to the credit of the General Fund.

SEC. 8. Section 1308 of the Labor Code is amended to read:

1308. (a) Any person is guilty of a misdemeanor and is punishable by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000), imprisonment for not exceeding six months, or both, who, as parent, relative, guardian, employer, or otherwise having the care, custody, or control of any minor under the age of 16 years, exhibits, uses, or employs, or in any manner or under any pretense, sells, apprentices, gives away, lets out, or disposes of the minor to any person, under any name, title, or

pretense for, or who causes, procures, or encourages the minor to engage in any of the following:

(1) Any business, exhibition, or vocation injurious to the health or dangerous to the life or limb of the minor.

(2) The vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contortionist, or rider, in any place whatsoever.

(3) Any obscene, indecent, or immoral purposes, exhibition, or practice whatsoever. Notwithstanding any other provision of law, this paragraph shall apply to a person with respect to any minor under the age of 18 years.

(4) Any mendicant or wandering business.

Any person who willfully violates this section shall, upon conviction, be subject to a fine of not more than ten thousand dollars ($10,000), or to imprisonment in the county jail for not more than six months, or both. No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

(b) Nothing in this section applies to or affects any of the following:

(1) The employment or use of any minor as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music.

(2) The employment of any minor as a musician at any concert or other musical entertainment, or as a performer in any form of entertainment, on the written consent of the Labor Commissioner pursuant to Section 1308.5.

(3) The participation by any minor of any age, whether or not the minor receives payment for his or her services or receives money prizes, in any horseback riding exhibition, contest, or event other than a rough stock rodeo event, circus, or race. As used in this paragraph, "rough stock rodeo event" means any rodeo event operated for profit or operated by other than a nonprofit organization in which unbroken, little-trained, or imperfectly trained animals are ridden or handled by the participant, and shall include, but not be limited to, saddle bronc riding, bareback riding, and bull riding. As used in this paragraph, "race" means any speed contest between two or more animals that are on a course at the same time and that is operated for profit or operated other than by a nonprofit organization.

(4) The leading of livestock by a minor in nonprofit fairs, stock parades, livestock shows and exhibitions.

SEC. 9. Section 1308.3 of the Labor Code is amended to read:

1308.3. (a) Except as provided in subdivision (g), any individual, association, corporation, or other entity that employs or uses, either directly or indirectly through third persons, minors under 16 years of age in door-to-door sales at any location more than 10 miles from the

minor's residence shall register with the Labor Commissioner pursuant to this section. Registration may be renewed on an annual basis.

(b) The Labor Commissioner shall not register or renew registration of any applicant pursuant to this section unless all of the following conditions are satisfied:

(1) The organization has executed a written application therefor on a form prescribed by the Labor Commissioner, including all of the following:

(A) The company's name, address, and employer identification number, and the names, addresses, and social security numbers of all adults employed to supervise, accompany, or transport minors who would be engaged in door-to-door sales. The information provided pursuant to this subparagraph shall be set forth in a declaration under penalty of perjury by the applicant if an individual, or an officer of an applicant that is an association, corporation, or other entity.

(B) A statement of all the facts required by the Labor Commissioner concerning the nature of the merchandise to be sold and a plan detailing the level and nature of adult supervision to be provided minors engaged in door-to-door sales. The information provided pursuant to this subparagraph shall be by declaration under penalty of perjury by the individual, or an officer of the association, corporation, or other entity.

(C) A copy of any written contract or other written agreement to be offered by the applicant to minors employed or used by the applicant in door-to-door sales.

(2) The Labor Commissioner, following an investigation thereof, is satisfied that the employer has not previously violated this article and does not propose to expose minors in its employ to hazardous or unsafe working conditions.

(3) Each application for initial registration shall be accompanied by a fee determined by the Labor Commissioner in an amount sufficient in the aggregate to defray the division's costs of administering the registration program, but which shall not exceed three hundred fifty dollars ($350) for initial registration or two hundred dollars ($200) for registration renewal.

(c) Any registrant under this section shall, upon request, make available for inspection by the Labor Commissioner all of its payroll records for any period.

(d) Any registrant under this section, or person acting on behalf of a registrant, shall have proof of registration with the Labor Commissioner in his or her immediate possession at all times when engaged in any activity described in subdivision (a).

(e) Whenever an application for a registration or renewal is made, and application processing pursuant to this section has not been completed, the Labor Commissioner may, at his or her discretion, issue a temporary or provisional registration valid for a period not exceeding 90 days, and subject, where appropriate, to summary

revocation by the Labor Commissioner. Otherwise, the conditions for issuance or renewal of registration shall meet the requirements of subdivision (a).

(f) Any person or entity, or any agent or officer thereof, who violates subdivision (a) or (d), and any parent or guardian who knowingly permits a minor in his or her custody to be employed in door-to-door sales specified in subdivision (a) by an unregistered person or entity, or permits any minor to be employed in violation hereof, is guilty of a misdemeanor, punishable by a fine of one thousand dollars ($1,000) per affected minor for the first conviction for a violation, two thousand five hundred dollars ($2,500) per affected minor for the second conviction for a violation, and ten thousand dollars ($10,000) per affected minor for a third or subsequent conviction for a violation.

(g) This section does not apply to any trustee or charitable corporation, as defined in Sections 12582 and 12582.1, respectively, of the Government Code, or to any entity described in Section 12583 of the Government Code.

SEC. 10. Section 1309.6 of the Labor Code is amended to read:

1309.6. (a) Any person who violates any provision of Section 1309.5 shall be liable for a civil penalty not to exceed seven thousand five hundred dollars ($7,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

SEC. 11. Section 1391 of the Labor Code is amended to read:

1391. (a) Except as provided in Sections 1297, 1298, and 1308.7:

(1) No employer shall employ a minor 15 years of age or younger for more than eight hours in one day of 24 hours, or more than 40 hours in one week, or before 7 a.m. or after 7 p.m., except that from June 1 through Labor Day, a minor 15 years of age or younger may be employed for the hours authorized by this section until 9 p.m. in the evening.

(2) Notwithstanding paragraph (1), while school is in session, no employer shall employ a minor 14 or 15 years of age for more than three hours in any schoolday, nor more than 18 hours in any week, nor during school hours, except that a minor enrolled in and employed pursuant to a school-supervised and school-administered work experience and career exploration program may be employed

for no more than 23 hours, any portion of which may be during school hours.

(3) No employer shall employ a minor 16 or 17 years of age for more than eight hours in one day of 24 hours or more than 48 hours in one week, or before 5 a.m., or after 10 p.m. on any day preceding a schoolday. However, a minor 16 or 17 years of age may be employed for the hours authorized by this section during any evening preceding a nonschoolday until 12:30 a.m. of the nonschoolday.

(4) Notwithstanding paragraph (3), while school is in session, no employer shall employ a minor 16 or 17 years of age for more than four hours in any schoolday, except as follows:

(A) The minor is employed in personal attendant occupations, as defined in the Industrial Welfare Commission Minimum Wage Order No. 15 (8 Cal. Code Regs. Sec. 11150), school-approved work experience, or cooperative vocational education programs.

(B) The minor has been issued a permit to work pursuant to subdivision (c) of Section 49112 and is employed in accordance with the provisions of that permit.

(b) For purposes of this section, "schoolday" means any day in which a minor is required to attend school for 240 minutes or more.

(c) Any person or the agent or officer thereof, or any parent or guardian, who directly or indirectly violates or causes or suffers the violation of this section is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or imprisonment in the county jail for not more than 60 days, or both. Any person who willfully violates this section shall, upon conviction, be subject to a fine of not more than ten thousand dollars ($10,000) or to imprisonment in the county jail for not more than six months, or both. No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

(d) Nothing in this section shall apply to any minor employed to deliver newspapers to consumers.

SEC. 12. Section 1393 of the Labor Code is amended to read:

1393. (a) Notwithstanding any other provision of this article and Article 2 (commencing with Section 49110) of Chapter 7 of Part 27 of Division 4 of Title 2 of the Education Code, the Labor Commissioner may issue an exemption from laws regulating the employment of minors to employers operating agricultural packing plants that employ minors 16 and 17 years of age during any day during which school is not in session, for up to 10 hours per day during the peak harvest season. These exemptions shall only be granted if they do not materially affect the safety and welfare of minor employees and will prevent undue hardship on the employer. The Labor Commissioner may require an inspection of an agricultural packing plant prior to issuing an exemption.

(b) Any exemption granted pursuant to subdivision (a) shall be in writing to be effective, and may be revoked after reasonable notice

is given, in writing, by the Labor Commissioner. Any notice of revocation shall include the reason for the revocation.

(c) An application for an exemption under subdivision (a) shall be made by an employer on a form provided by the Labor Commissioner, and a copy of the application shall be posted at the employer's place of employment at the time the application is filed with the division.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 888

An act to add Section 755 to the Evidence Code, relating to evidence.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 755 is added to the Evidence Code, to read:

755. (a) In any action or proceeding under Division 10 (commencing with Section 6200) of the Family Code, and in any action or proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) or for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code, in which a party does not proficiently speak or understand the English language, and that party is present, an interpreter, as provided in this section, shall be present to interpret the proceedings in a language that the party understands, and to assist communication between the party and his or her attorney. Notwithstanding this requirement, a court may issue an ex parte order pursuant to Sections 2045 and 7710 of, and Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 of the Family Code, without the presence of an interpreter. The interpreter selected shall be certified pursuant to Article 4

(commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code, unless the court in its discretion appoints an interpreter who is not certified.

(b) The fees of interpreters utilized under this section shall be paid as provided in subdivision (b) of Section 68092 of the Government Code. However, the fees of an interpreter shall be waived for a party who needs an interpreter and appears in forma pauperis pursuant to Section 68511.3 of the Government Code. The Judicial Council shall amend subdivision (i) of California Rule of Court 985 and revise its forms accordingly by July 1, 1996.

(c) In any civil action in which an interpreter is required under this section, the court shall not commence proceedings until the appointed interpreter is present and situated near the party and his or her attorney. However, this section shall not prohibit the court from doing any of the following:

(1) Issuing an order when the necessity for the order outweighs the necessity for an interpreter.

(2) Extending the duration of a previously issued temporary order if an interpreter is not readily available.

(3) Issuing a permanent order where a party who requires an interpreter fails to make appropriate arrangements for an interpreter after receiving proper notice of the hearing with information about obtaining an interpreter.

(d) This section does not prohibit the presence of any other person to assist a party.

(e) A local public entity may, and the Judicial Council shall, apply to the appropriate state agency that receives federal funds authorized pursuant to the federal Violence Against Women Act (P.L. 103-322) for these federal funds or for funds from sources other than the state to implement this section. A local public entity and the Judicial Council shall comply with the requirements of this section only to the extent that any of these funds are made available.

(f) The Judicial Council shall draft rules and modify forms necessary to implement this section, including those for the petition for a temporary restraining order and related forms, to inform both parties of their right to an interpreter pursuant to this section.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 889

An act to add Chapter 2.12 (commencing with Section 7286.60) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Chapter 2.12 (commencing with Section 7286.60) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.12. TRUCKEE TRANSACTIONS AND USE TAX

7286.60. (a) Subject to subdivision (b), the Town of Truckee may levy a transactions and use tax at a rate of 0.5 percent, if an ordinance or resolution proposing that tax is approved by a majority vote of all the members of the town council and the tax is approved by a two-thirds vote of the qualified voters of the town voting in an election on the issue.

(b) (1) Any transactions and use tax levied under this section shall be levied pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(2) The net revenues derived from a tax levied under this section shall be expended exclusively for the repair, replacement, construction, or reconstruction of the town's streets and roads system.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the uniquely difficult fiscal pressures being experienced by the Town of Truckee in providing essential services with respect to transportation.

CHAPTER 890

An act to amend Section 288 of the Penal Code, relating to crimes against the elderly and dependent adults.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 288 of the Penal Code is amended to read:

288. (a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent adult by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) (1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and the defendant is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent adult, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent adult victim resulting from participation in the court process.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars ($10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited

to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent adults:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent adults ages 18 to 22 years and postsecondary educational institutions that serve dependent adults or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent adults, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.
(C) Grooming.
(D) Medication storage.
(E) Medical dispensation.
(F) Money management.

(3) "Dependent adult" means any person 18 years of age or older who has a mental disability or disorder that restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have developmental disabilities, persons whose mental abilities have significantly diminished because of age.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent adult under care.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 891

An act to amend Section 5800 of the Business and Professions Code, relating to interior designers.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 5800 of the Business and Professions Code is amended to read:

5800. As used in this chapter:

(a) "Certified interior designer" means a person who prepares and submits nonstructural or nonseismic plans consistent with Sections 5805 and 5538 to local building departments that are of sufficient complexity so as to require the skills of a licensed contractor to implement them, and who engages in programming, planning, designing, and documenting the construction and installation of nonstructural or nonseismic elements, finishes and furnishings within the interior spaces of a building, and has demonstrated by means of education, experience and examination, the competency to protect and enhance the health, safety, and welfare of the public.

(b) An "interior design organization" means a nonprofit professional organization of certified interior designers whose governing board shall include representatives of the public.

CHAPTER 892

An act to amend Sections 69899.5, 69911, 70046.2, 73084.2, 73084.3, 73084.4, 73084.5, 73089, 73096, 73398, 73399, 73433, 73433.1, 73433.4, 73434, 73435, 73436, 73436.1, 73436.2, 73440, 73487, 73489, 73490, 73523, 73524, 73525, 73529, 73601, 73602, 73644, 73682, 73683, 73684, 73691, 73692, 73695, 73699.1, 73705, 73710, 73713, 73714, 73736, 73822, 73823, 73954, 74001.5, 74002, 74004, 74010, 74011, 74012, 74013, 74014, 74141, 74143, 74207, 74208, 74344, 74604, 74607, 74610, 74642, 74643, 74644.1, 74644.5, 74647, 74663, 74665, 74745, 74783, 74803, 74805, 74807, 74808, 74809, 74921.7, 74921.10, 74925.2, 74954, 74954.5, 74955, 74956, 74984, 74985, 74986, and 74987 of, to add Sections 73436.05 and 74811 to, and to repeal Sections 73485, 73491, 73492, 73708, 73715, 73716.2, and 74809.5 of, the Government Code, relating to courts.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 69899.5 of the Government Code is amended to read:

69899.5. In the County of Orange, a majority of the judges of the superior court may appoint or delegate authority to the Superior Court Executive Officer to appoint the following officers and employees whose salaries shall be:

Number of Positions	Title	Salary Range
10	Accounting Assistant II—Superior Court	D36
1	Accounting Office Supervisor I—Superior Court	D42
1	Accounting Office Supervisor II—Superior Court	D46
1	Accounting Specialist	D39
21	Appeals and Calendar Clerk	D37
18	Attorney III—Superior Court	L03
24	Court Mediator II	A62
35	Courtroom Assistant	D39
15	Data Entry Specialist—Superior Court	D39
1	Data Entry Supervisor III	D46
16	Data Entry Tech	D37
2	Deputy Probation Officer II—Superior Court	A57
3	Executive Secretary II—Superior Court	D50
12	Information Processing Technician—Superior Court	D37
3	Information Systems Technician—Superior Court	A55
4	Juvenile Court Referee	80% of Salary of Superior Court Judge
4	Legal Property Technician	A40
3	Mediation/Investigative Services Supervisor	A66
81	Office Assistant—Superior Court	D33
29	Office Specialist—Superior Court	D39
4	Office Supervisor A	D40
3	Office Supervisor B	D42
2	Office Supervisor C	D44
3	Office Supervisor D	D46
5	Office Technician	D33
1	Personnel Services Coordinator II	A47
1	Probate Calendar Coordinator	A59
2	Probate Checker	A48

7	Probate Examiner II	A55
6	Probate Investigator I	A51
1	Probate Investigator II	A53
1	Secretary I—Superior Court	D37
3	Senior Accounting Assistant	D41
1	Senior Accounting Office Supervisor I	D50
9	Senior Judicial Secretary	D44
2	Senior Office Supervisor A/B—Superior Court	D47
1	Senior Personnel Services Coordinator	A51
4	Senior Systems/Programmer Analyst—Superior Court	A70
1	Staff Development Specialist	A56
5	Store Clerk—Superior Court	H07
2	Storekeeper I—Superior Court	H10
132	Superior Court Clerk II	S02
13	Superior Court Commissioner	85% of Salary of Superior Court Judge
34	Superior Court Manager	MLSC
13	Superior Court Services Supervisor I	D55
5	Superior Court Services Supervisor II	D58
1	Supervising Attorney—Superior Court	L04
1	Supervising Judicial Secretary—Superior Court	D49
1	Supervising Probate Examiner	A59
6	Systems/Programmer Analyst I—Superior Court	A60
8	Systems/Programmer Analyst II—Superior Court	A64
1	Technical Systems Specialist	A67
2	Utility Worker/Driver	A34
8	Writs and Judgment Clerk	D38

The references to a numbered salary range in this section are to the salary schedule in the Personnel and Salary Resolution of the County of Orange.

All personnel appointed pursuant to this section shall serve at the pleasure of the majority of the judges and may at any time be removed by the majority of the judges in their discretion or of the Superior Court Executive Officer when so delegated.

With the approval of the board of supervisors, the superior court may establish any additional positions, titles and pay rates as are required, and may appoint and employ any additional commissioners, officers, assistants, and other employees it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Rates of compensation of all officers, assistants, and other employees authorized by this section, except those of court commissioners, may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court, the Superior Court Executive Committee or the Superior Court Executive Officer when so delegated.

All court personnel shall be entitled to any step advancement, vacation, sick leave, holiday benefits, other leaves of absence, lump-sum payments for sick leave and vacation when separated from the service, inclusion in the retirement system of the County of Orange and other benefits as may be adopted in a memorandum of understanding with a recognized employee organization or as may be directed by rules adopted by a majority of the judges as are provided to county employees of the county.

Superior court commissioners shall be entitled to any benefits as may be directed by rules adopted by the majority of the judges.

Where statutes require implementation by local ordinances for the extension of benefits to local officers and employees, these benefits may be made applicable, by rule, to those employees.

Rules of the court may include other matters pertaining to the general administration of the court, including conditions of employment of personnel. When the rules are adopted by a majority of the judges and filed with the Judicial Council they shall have the same status as other rules of court adopted pursuant to Section 68070.

When requested to do so by the court, the county shall furnish to the superior court any services as may be required in connection with the recruitment and employment of personnel.

All such personnel and judges shall be allowed actual traveling and necessary expenses incurred while engaged in the duties of their employment or office outside of the county.

SEC. 2. Section 69911 of the Government Code is amended to read:

69911. In the County of Kern, a majority of the judges of the superior court may appoint the following officers and employees whose salaries shall be:

Number	Title	Range
1	Superior Court Executive Officer/Jury Commissioner	64.3
3	Principal Attorney Senior Attorney OR Associate Attorney OR Deputy Attorney OR	62.0 or, 59.2 or, 56.3 or, 53.5
1	Court Commissioner	75–85% of a Superior Court judge's annual salary
1	Senior Juvenile Court Referee	75–85% of a Superior Court judge's annual salary
1	Court Services Manager	53.1
1	Superior Court Calendar Coordinator	47.9
1	Departmental Systems Coordinator II	54.8
1	Probate Examiner	48.5
13	Assistant Secretary, Superior Court	44.0
22	Court Reporter	55.4
1	Asst. Clerk of the Court	60.7
1	Dept. Systems Coord. I	52.8
1	Data Entry OP II	39.4
1	Account Clerk IV	44.4
2	Account Clerk II OR Account Clerk I	38.9 36.1
1	Records Clerk	41.2
2	Microphotographer	40.3
2	Asst. Chief Deputy Clerk	52.6
1	CJIS Coord.	49.6
4	Supv. Superior Court Clerk	49.6
24	Superior Court Clerk II OR Superior Clerk I	47.4 43.8
10	Deputy Clerk III	45.8
32	Deputy Clerk II OR Deputy Clerk I	43.7 41.4

4	Typist Clerk II OR	38.1
	Typist Clerk I	35.3
1	Clerk III	40.3
2	Clerk II OR	37.6
	Clerk I	34.8
1	Senior Secretary	44.5

The salary range set forth above is provided for in the salary schedule of the Kern County salary ordinance.

All personnel appointed pursuant to this section shall be noncivil service and shall serve at the pleasure of the majority of the judges. With the approval of the board of supervisors, the majority of the judges may establish any additional positions as are required, and, with the approval of the board of supervisors, may appoint and employ additional commissioners, officers, assistants, and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Rates of compensation of all positions assigned to the superior court may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court. Any additional appointments or changes in compensation made pursuant to this section shall be on an interim basis and shall expire on the effective date of appropriate ratifying or modifying state legislation.

All personnel appointed pursuant to this section shall be entitled to the same employee benefits, with the exception of court holidays, as provided to all other county employees by the board of supervisors.

SEC. 3. Section 70046.2 of the Government Code is amended to read:

70046.2. In Fresno County, each reporter shall be paid an annual salary established according to the following salary schedule:

Step 1. $42,130
Step 2. $44,241
Step 3. $46,431
Step 4. $48,753

Reporters shall initially be placed at step 1 of the salary schedule except reporters may be placed at a higher step with the approval of the county administrative officer, and shall advance one step annually upon the anniversary date of the employment. If, because of recruitment difficulties, it is necessary to appoint a court reporter at a step of the salary schedule which is above the step at which any court reporters are currently employed, all court reporters below that step will move to the higher step at the discretion of the judges of the court.

Each pro tempore reporter shall be paid one hundred sixty-two dollars and four cents ($162.04) for a full day on duty under order of the court. For purposes of receiving the above compensation, one or more of the following shall apply:

(1) The court has indicated in advance that the pro tempore assignment is for a full day.

(2) The pro tempore reporter, having accepted a full-day assignment, has not voluntarily relinquished his or her services at or before the end of four hours of service.

(3) The pro tempore reporter was on duty for more than four hours.

Each pro tempore reporter shall be paid one hundred eight dollars and seven cents ($108.07) for one-half day of duty under order of the court when (a) the court has indicated in advance that the pro tempore assignment is for a half day and the pro tempore reporter is on duty for four hours or less, generally exclusive of the noon recess; or (b) the court has indicated in advance that the pro tempore assignment is for a full day but the pro tempore reporter is on duty for four hours or less and consents to being released for the balance of the day.

Where a pro tempore reporter has agreed to a one-half day assignment, the courts shall make every practicable effort to assure that the pro tempore reporter shall not be on duty for longer than four hours, unless the pro tempore reporter agrees with the court to work beyond four hours. In the latter case, the full-day pro tempore rate of one hundred sixty-two dollars and four cents ($162.04) shall apply.

Nothing herein shall be construed to limit the court's authority to in all instances pay a pro tempore reporter at the rate of one hundred sixty-two dollars and four cents ($162.04) when, in the court's judgment, said rate is necessary to obtain pro tempore reporter services for the court.

In addition to the salary herein provided, each regularly employed reporter shall accrue and be entitled to receive sick leave benefits at the rate of 3.6924 hours of sick leave with pay for each pay period or major fraction thereof, served up to an accumulative total of 156 working days. Each such reporter shall accrue and receive vacation at the same rate as judges of such court not to exceed 21 working days a year which may be accrued not to exceed 42 days to be taken at such time as the judge to which he or she has been assigned consents.

SEC. 4. Section 73084.2 of the Government Code is amended to read:

73084.2. The clerk and administrative officer of the municipal court for the Berkeley-Albany Judicial District may appoint the following deputy clerks:

(a) One chief deputy clerk.

(b) Three deputy clerks, division chief.

(c) One deputy clerk, financial hearing officer.

(d) Five deputy clerks, municipal courtroom clerk.

(e) Six deputy clerks, senior municipal court clerk.

(f) Ten deputy clerks, municipal court clerk.

(g) Two deputy clerks, clerk II.

(h) One deputy clerk, secretary II.
(i) One deputy clerk, supervising accountant I.
(j) One deputy clerk, account clerk II.
(k) One deputy clerk, account clerk I.
(*l*) Two deputy clerks, data input clerk.
(m) One deputy clerk, court attendant.
(n) Two court reporters.

Not more than three such deputy clerks may be assigned as court interpreter at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 5. Section 73084.3 of the Government Code is amended to read:

73084.3. The clerk and administrative officer of the municipal court for the Oakland-Piedmont-Emeryville Judicial District may appoint the following deputy clerks:

(a) One chief deputy clerk.

(b) Three deputy clerks, division chiefs. The clerk and administrative officer may transfer the division chiefs from one division to another regardless of any resulting change in salary as set forth in subdivision (a) of Section 73086.

(c) Four deputy clerks, assistant division chiefs.
(d) One deputy clerk, calendar coordinator.
(e) Five deputy clerks, supervising municipal court clerk II.
(f) Nineteen deputy clerks, municipal courtroom clerk.
(g) Six deputy clerks, supervising municipal court clerk I.
(h) Eight deputy clerks, senior municipal court clerk.
(i) Fifty-eight deputy clerks, municipal court clerk.
(j) Eleven clerks, clerk II.
(k) One deputy clerk, supervising secretary II.
(*l*) Three deputy clerks, secretary II.
(m) Ten deputy clerks, data input clerk.
(n) Two deputy clerks, pretrial specialist.
(o) One deputy clerk, management specialist.
(p) Two deputy clerks, financial hearing officers.
(q) One deputy clerk, systems analyst.
(r) Eight court reporters.
(s) One deputy clerk, court training officer.

Not more than eight such deputy clerks may be assigned as court interpreters at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 6. Section 73084.4 of the Government Code is amended to read:

73084.4. The clerk and court administrator of the municipal court for the San Leandro-Hayward Judicial District may appoint the following deputy clerks:

(a) One assistant clerk and court administrator.

(b) Five deputy clerks, division chiefs. The clerk and court administrator may transfer the division chiefs from one division to

another regardless of any resulting change in salary as set forth in Section 73086.

(c) Nine deputy clerks, municipal courtroom clerk.

(d) Five deputy clerks, supervising municipal court clerk I.

(e) Three deputy clerks, senior municipal court clerk.

(f) Thirty-nine deputy clerks, municipal court clerk.

(g) One deputy clerk, supply clerk II.

(h) One deputy clerk, supervising secretary II.

(i) One deputy clerk, secretary II.

(j) One deputy clerk, supervising accountant I.

(k) One deputy clerk, court attendant.

(*l*) Two deputy clerks, financial hearing officer.

(m) One deputy clerk, information systems analyst.

Not more than five such deputy clerks may be assigned as court interpreters at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 7. Section 73084.5 of the Government Code is amended to read:

73084.5. The clerk and administrative officer of the municipal court for the Fremont-Newark-Union City Judicial District may appoint the following deputy clerks:

(a) One chief deputy clerk.

(b) Six deputy clerks, municipal courtroom clerk.

(c) Four deputy clerks, division chief.

(d) Five deputy clerks, senior municipal court clerk.

(e) Twenty-four deputy clerks, municipal court clerk.

(f) Four deputy clerks, clerk II.

(g) One deputy clerk, secretary II.

(h) One deputy clerk, supervising accountant I.

(i) Two deputy clerks, account clerk II.

(j) One deputy clerk, account clerk I.

(k) Three deputy clerks, data input clerk.

(*l*) Three deputy clerks, supervising municipal court clerk I.

(m) One deputy clerk, financial hearing officer.

(n) One deputy clerk, supervising secretary II.

(o) One deputy clerk, court attendant.

(p) One deputy clerk, pretrial specialist.

(q) One deputy clerk, information systems technician II.

Not more than four such deputy clerks may be assigned as court interpreters at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 8. Section 73089 of the Government Code is amended to read:

73089. With the approval of the board of supervisors, judges of each municipal court concerned within Alameda County may establish additional titles and pay rates as are required and may appoint additional deputy clerks, officers, assistants, and other employees as deemed necessary for the powers conferred by law

upon the court and its members. Rates of compensation of the clerk and administrative officers, deputy clerks, officers, assistants, and other employees may be adjusted by joint action and approval of the board of supervisors and the judges in each respective municipal court within the county.

If the board of supervisors provides by ordinance or resolution for any increase in the number or rate of compensation of any municipal court personnel pursuant to this section, that increase shall be effective only until January 1, 1998, and shall be effective at the same time and in the same manner as increases for Alameda County employees generally.

SEC. 9. Section 73096 of the Government Code is amended to read:

73096. Official reporters of municipal courts in Alameda County, in lieu of any other compensation provided by law for their services in reporting testimony and proceedings in such court, shall receive one of the following:

(a) Two hundred seven dollars and sixty-three cents ($207.63) a day for the days they actually are on duty under order of the court.

(b) A minimum payment of one hundred three dollars and eighty-two cents ($103.82) for serving four hours or less a day.

(c) Regular official court reporters shall receive a salary, vacation leave, and sick leave, in the same amounts as the official reporters of the Superior Court in Alameda County as set forth in Alameda County Salary Ordinance for item number classification 1625.

Rates of compensation of regular official reporters and official reporters pro tempore may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court, provided, however, that any changes in compensation which are made pursuant to this section shall be on an interim basis and shall remain in effect only until January 1, 1998, unless ratified by statute by the Legislature prior to that date.

SEC. 14. Section 73398 of the Government Code is amended to read:

73398. There shall be one clerk of the court, known as the court executive officer/clerk of the court, who shall be appointed by and serve at the pleasure of the majority of the judges of both municipal and superior courts. The court executive officer/clerk of the court shall receive a salary as provided by law.

SEC. 15. Section 73399 of the Government Code is amended to read:

73399. (a) The court executive officer/clerk of the court may appoint:

(1) One account clerk III who shall receive a salary in Range 45.5.

(2) Three court clerks who shall each receive a salary specified in Range 49.0.

(3) Five court services clerks III, as supervisors who shall each receive a salary specified in Range 49.0.

(4) Twelve municipal court services clerks I/II, who shall each receive a salary specified in Range 39.0 or 44.0.

(5) One program manager who shall receive a salary specified in Range 80.5.

(6) One management analyst III who shall receive a salary specified in Range 84.0.

(b) The court executive officer, with the approval of the board of supervisors, may appoint such additional employees as may be necessary, each appointment to remain in effect only until January 1 of the second fiscal year following the fiscal year in which the appointment was made, unless subsequently ratified by the Legislature.

(c) Whenever reference to a numbered salary range is made in any section of this article, the schedule of hourly rates of pay and approximate monthly equivalents found in the Salary Resolution of the County of Kings in effect on January 1, 1995, shall apply.

(d) If the board of supervisors adopts a revised salary resolution for county employees or applies new salary range numbers for the purpose of salary adjustment, the new salary rates shall apply equally to the positions named in this article. Any salary adjustment made pursuant to this section shall be effective on the same date as the action applicable to other county permanent classified employees, but shall remain in effect only until January 1 of the second fiscal year following the fiscal year in which such adjustment in salary is made, unless subsequently ratified by the Legislature.

SEC. 16. Section 73433 of the Government Code is amended to read:

73433. There shall be one clerk-administrator in each municipal court who shall be appointed by and serve at the pleasure of a majority of the judges of the court to which the clerk-administrator is appointed. In a court with less than three judges, the presiding judge shall appoint the clerk-administrator of the court. The clerk-administrator of the East Kern Municipal Court shall receive the biweekly salary specified in range 55.3 of the salary schedule. The clerk-administrator of the North Kern Municipal Court shall receive the biweekly salary specified in range 55.3 of the salary schedule. The clerk-administrator of the South Kern Municipal Court shall receive the biweekly salary specified in range 55.3 of the salary schedule. The clerk-administrator of the Bakersfield Municipal Court shall receive the biweekly salary specified in range 61.6 of the salary schedule.

SEC. 17. Section 73433.1 of the Government Code is amended to read:

73433.1. There shall be one assistant clerk-administrator in the Bakersfield Municipal Court who shall be appointed by and serve at the pleasure of the majority of the judges of the court. The assistant clerk-administrator shall receive the biweekly salary specified in range 55.3 of the salary schedule.

SEC. 18. Section 73433.4 of the Government Code is amended to read:

73433.4. There shall be one assistant clerk-administrator in the South Kern Municipal Court who shall be appointed by and serve at the pleasure of the majority of the judges of the court. The assistant clerk-administrator shall receive the biweekly salary specified in range 51.3 of the salary schedule.

SEC. 19. Section 73434 of the Government Code is amended to read:

73434. There shall be two judicial secretaries in the Bakersfield Municipal Court who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The judicial secretaries shall receive a biweekly salary specified in range 45.9 of the salary schedule.

SEC. 20. Section 73435 of the Government Code is amended to read:

73435. The clerk-administrator of the Bakersfield Municipal Court may appoint:

(a) Three chief deputy municipal court clerks who shall act as the supervisors of the civil, criminal, and traffic divisions of the court and each of whom shall receive the biweekly salary specified in range 49.6 of the salary schedule.

(b) Seven senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 47.5 of the salary schedule.

(c) One supervising courtroom clerk, who shall supervise the deputy municipal courtroom clerks and who shall receive the biweekly salary specified in range 49.6 of the salary schedule.

(d) One senior courtroom clerk who shall receive the biweekly salary specified in range 48.6 of the salary schedule.

(e) Eighteen deputy municipal courtroom clerks II or deputy municipal courtroom clerks I, each of whom shall receive the biweekly salary specified in ranges 47.4 and 43.8, respectively, of the salary schedule.

Deputy municipal courtroom clerk I shall be the entrance position to deputy municipal courtroom clerk II. The clerk-administrator, with the concurrence of the presiding judge, may advance any deputy municipal courtroom clerk I to the position of deputy municipal courtroom clerk II without further examination, if the deputy municipal courtroom clerk I has served for six months and otherwise meets the qualifications for deputy municipal courtroom clerk II and if the presiding judge is satisfied with the deputy municipal courtroom clerk I's performance during the six-month period.

(f) Three data entry operators II or I, each of whom shall receive the biweekly salary specified in ranges 39.4 and 37.4, respectively, of the salary schedule. Data entry operator I shall be the entrance position to the data entry operator series. The clerk-administrator

may advance any data entry operator I to the position of data entry operator II without further examination if the data entry operator I has served for one year and otherwise meets the qualifications for data entry operator II.

(g) Fifty-one full-time deputy municipal court clerks II or I, each of whom shall receive the biweekly salary specified in ranges 43.7 and 41.4, respectively, of the salary schedule.

Deputy municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any deputy municipal court clerk I to the position of deputy municipal court clerk II without further examination if the deputy municipal court clerk I has served for six months and otherwise meets the qualifications for deputy municipal court clerk II.

(h) Two judicial secretaries who shall receive the biweekly salary specified in range 45.9 of the salary schedule.

(i) One accountant II or I who shall receive the biweekly salary specified in ranges 50.7 and 48.0, respectively, of the salary schedule. Accountant I shall be the entrance position to the accountant series. The clerk-administrator may advance the accountant I to the position of accountant II without further examination if the accountant I has served for one year and otherwise meets the qualifications of accountant II.

(j) One accountant III who shall receive the biweekly salary specified in range 53.6 of the salary schedule.

(k) Two court services technicians, each of whom shall receive the biweekly salary specified in range 43.7 of the salary schedule.

(*l*) Two deputy administrative court clerks, each of whom shall receive the biweekly salary specified in range 43.4 of the salary schedule.

(m) One microphotographer who shall receive the biweekly salary specified in range 40.3 of the salary schedule.

(n) One administrative services officer who shall receive the biweekly salary specified in range 57.2 of the salary schedule.

(o) One department systems coordinator I who shall receive the biweekly salary specified in range 52.8 of the salary schedule.

(p) One court interpreter who shall receive the biweekly salary specified in range 43.7 of the salary schedule.

(q) One court interpreter/coordinator who shall receive the biweekly salary specified in range 47.5 of the salary schedule.

(r) One senior microphotographer who shall receive the biweekly salary specified in range 44.5 of the salary schedule.

(s) Five court reporters who shall receive the biweekly salary specified in range 55.4 of the salary schedule.

(t) One director of collections who shall receive the biweekly salary specified in range 56.4 of the salary schedule.

SEC. 21. Section 73436 of the Government Code is amended to read:

73436. The clerk-administrator of the East Kern Municipal Court may appoint:

(a) Two regional chief municipal court clerks who shall act as the supervisors of the branches of the court and each of whom shall receive the biweekly salary specified in range 49.6 of the salary schedule.

(b) Six regional senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 47.5 of the salary schedule.

(c) Eighteen regional municipal court clerks III, II, I, each of whom shall receive the biweekly salary specified in ranges 45.8, 43.7, and 41.4, respectively, of the salary schedule.

Regional municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any regional municipal court clerk I to the position of regional municipal court clerk II without further examination if the regional municipal court clerk I has served for six months and otherwise meets the qualifications for regional municipal court clerk II.

(d) One account clerk III who shall receive the biweekly salary specified in range 41.6 of the salary schedule.

(e) One court reporter who shall receive the biweekly salary specified in range 55.4 of the salary schedule.

SEC. 22. Section 73436.05 is added to the Government Code, to read:

73436.05. (a) The judges of the North Kern Municipal Court may appoint one commissioner. The commissioner shall possess the same qualifications as the law requires of a judge of the court. Within the jurisdiction of the court and under the direction of the judges, the commissioner shall exercise the powers and perform the duties authorized by law to be performed by the commissioners of the superior court and any additional powers and duties as may be prescribed by law.

(b) The commissioner shall be paid biweekly, pursuant to the payroll procedures in effect in the County of Kern, in an amount equal to 70 to 85 percent of a municipal court judge's salary. The court shall recommend to the board of supervisors the level of salary to be received by the commissioner based on his or her qualifications, performance, and other factors deemed relevant by the court, and the board of supervisors shall determine the salary level within the specified range. The biweekly salary rate of the commissioner shall be adjusted at the same time and manner and in the same percentage amount as set forth in Section 68203.

(c) In addition to the compensation provided for in this section, each commissioner shall be entitled to and shall receive on the same basis as other county employees, the same benefits and privileges with respect to retirement, group insurance, sick leave, and vacation. The commissioner shall observe the same holidays as other court employees.

SEC. 23. Section 73436.1 of the Government Code is amended to read:

73436.1. The clerk-administrator of the North Kern Municipal Court may appoint:

(a) Two regional chief municipal court clerks who shall act as the supervisors of the branches of the court and each of whom shall receive the biweekly salary specified in range 49.6 of the salary schedule.

(b) Two regional senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 47.5 of the salary schedule.

(c) Eighteen regional municipal court clerks III, II, or I, each of whom shall receive the biweekly salary specified in ranges 45.8, 43.7, and 41.4, respectively, of the salary schedule.

The position of regional municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any regional municipal court clerk I to the position of regional municipal court clerk II without further examination, if the regional municipal court clerk I has served for six months and otherwise meets the qualifications for regional municipal court clerk II.

(d) One court reporter who shall receive the biweekly salary specified in range 55.4 of the salary schedule.

(e) One account clerk IV who shall receive the biweekly salary specified in range 44.4 of the salary schedule.

SEC. 24. Section 73436.2 of the Government Code is amended to read:

73436.2. The clerk-administrator of the South Kern Municipal Court may appoint:

(a) One assistant clerk-administrator who shall act as the supervisor of the branches of the court and who shall receive the biweekly salary specified in range 51.3 of the salary schedule.

(b) One regional chief municipal court clerk who shall act as the supervisor of the branches of the court and who shall receive the biweekly salary specified in range 49.6 of the salary schedule.

(c) Two regional senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 47.5 of the salary schedule.

(d) Twenty regional municipal court clerks III, II, or I, each of whom shall receive the biweekly salary specified in ranges 45.8, 43.7, and 41.4, respectively, of the salary schedule.

The position of regional municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any regional municipal court clerk I to the position of regional municipal court clerk II without further examination, if the regional municipal court clerk I has served for six months and otherwise meets the qualifications for regional municipal court clerk II.

(e) One account clerk IV who shall receive the biweekly salary specified in range 44.4 of the salary schedule.

(f) One court interpreter who shall receive the biweekly salary specified in range 43.7 of the salary schedule.

(g) One court reporter who shall receive the biweekly salary specified in range 55.4 of the salary schedule.

SEC. 25. Section 73440 of the Government Code is amended to read:

73440. Official reporters in the municipal courts shall be appointed pursuant to Section 72194 and in lieu of any other compensation provided by law for their services in reporting testimony and proceedings in that court, shall receive a salary in the same sum as is paid the official reporters of the superior court in Kern County, which shall be the biweekly salary specified in range 54.6 of the salary schedule.

Each pro tempore official reporter shall be paid one hundred fifty dollars ($150) a day for the days he or she is actually on duty under order of the court. Official reporters shall be paid biweekly pursuant to payroll procedures in effect in the County of Kern. Official reporters in the municipal courts shall also be entitled to and shall receive, on the same basis as other county employees, the same benefits and privileges with respect to retirement, group insurance, sick leave, and vacation. Court reporters shall observe the same holidays as other court employees. For the purpose of determining participation in the county retirement system, the salary provided for such reporters in Sections 73435, 73436, 73436.1, and 73436.2 shall be deemed their entire compensation.

SEC. 26. Section 73485 of the Government Code is repealed.

SEC. 27. Section 73487 of the Government Code is amended to read:

73487. Persons employed in any of the positions authorized by this article shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule contained in Section 73486, except that if the range shown opposite the title of the position includes a fraction, then the person employed in such position shall be paid a salary equal to that shown opposite said fractional range in the salary ordinance of the County of San Joaquin:

Position	Range
(a) Deputy clerk I	50.00
(b) Deputy clerk II	52.00
(c) Deputy clerk III	53.50
(d) Municipal courtroom clerk	56.50
(e) Clerk/Administrator	62.50
(f) Deputy clerk–administrator	57.70

Subject to the provisions of the salary ordinance of the County of San Joaquin, each person employed in the clerk's office may receive an annual increase in salary of one step on his or her assigned range, until the employee reaches the maximum step on the range assigned for his or her position. Thereafter no additional step increase shall be granted.

SEC. 28. Section 73489 of the Government Code is amended to read:

73489. Whenever the salary of a related class or classes of San Joaquin County employees is adjusted, the salary of the following classes may be adjusted by a percentage not to exceed the percentage of adjustment granted to the class or classes deemed by the board of supervisors to be related:

(a) Deputy clerk I.
(b) Deputy clerk II.
(c) Deputy clerk III.
(d) Municipal courtroom clerk.
(e) Clerk/Administrator.
(f) Deputy clerk administrator.

All adjustments to the salaries of the above-named classes shall be effective as of the same date as the adjustment for the class or classes deemed to be related, and shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

SEC. 29. Section 73490 of the Government Code is amended to read:

73490. Notwithstanding any other provision of law, the provisions of the county ordinance relating to civil service and the rules of the civil service commission adopted pursuant thereto, shall be applicable to all employees in the same manner and to the same extent as applicable generally to officers and employees of the County of San Joaquin.

Such employees shall be entitled to the same vacation, sick leave, leave of absence, and similar benefits and may be appointed, promoted, demoted, terminated or transferred, or their status otherwise adjusted in the same manner and with the same effect as is or may be provided by the current salary ordinance of the County of San Joaquin, or the civil service ordinance of the county, for employees of the county.

SEC. 30. Section 73491 of the Government Code is repealed.

SEC. 31. Section 73492 of the Government Code is repealed.

SEC. 32. Section 73523 of the Government Code is amended to read:

73523. The municipal court judges may, by a majority vote, appoint a municipal court administrator who shall be the clerk of the municipal court. The municipal court administrator shall serve at the pleasure of a majority of the judges. The municipal court administrator shall receive a biweekly salary at the rate specified in

salary range number 4537 of the salary schedule. However, that salary may be adjusted pursuant to Section 73525. The municipal court administrator shall be the appointing authority for the positions listed in Section 73524.

The municipal court judges shall prescribe and regulate by majority vote the duties and authority of the municipal court administrator, among which shall be:

(a) To direct and coordinate the nonjudicial activities of the district.

(b) To coordinate the personnel practices in compliance with rules of the district and those of the County of San Mateo.

(c) To prepare and administer the budget of the district.

(d) To coordinate with county agencies, the acquisition, utilization, maintenance, and disposition of facilities, equipment, and supplies necessary for the operation of the district.

(e) To initiate studies and prepare appropriate recommendations and reports to the presiding judge and judges relating to the business of the district, including, but not limited to, such matters as standardization of forms and procedures, and of classification and compensation of court attachés.

(f) To collect, compare, and analyze statistical data on a continuing basis concerning the status of judicial and nonjudicial business of the district and to prepare periodic reports and recommendations based on such data.

(g) To provide for and conduct a program of in-service training for the personnel of the municipal court.

(h) To prepare procedure guides for the personnel of the municipal court.

(i) To make arrangements for and attend all meetings of the judges.

(j) To serve as liaison for the district with other persons, committees, boards, groups, and associations as directed by the presiding judge.

SEC. 33. Section 73524 of the Government Code is amended to read:

73524. The number of positions within each job classification which may be filled by appointment by the municipal court administrator, and the salary which constitutes compensation for each job classification, are as follows, subject to the authority of the board of supervisors to adjust the monthly salary pursuant to Section 73525:

Number	Classification	Salary Range Number
1	Deputy Municipal Court Administrator—Support	3554
1	Deputy Municipal Court Administrator—Operation	3554
1	Financial Services Manager II	3385
3	Court Services Manager II	3069
2	Management Analyst I/II/III	1979/2291/2651
1	Interpreter Services	2078
1	Senior Accountant	2563
2	Accountant I/II	1788/2089
1	Executive Assistant	1769
1	Departmental DP Specialist	1822
16	Municipal Court Clerk Supervisor	1985
18	Municipal Courtroom Clerk	1918
15	Lead Municipal Court Clerk	1615
1	Senior Utility Worker	1614
2	Lead Data Entry Operator	1525
2	Lead Fiscal Office Assistant	1525
1	Office Specialist	1489
1	Administrative Secretary III	1602
3	Administrative Secretary II	1525
77	Municipal Court Clerk I/II	1345/1458
10	Fiscal Office Assistant I/II	1173/1382
3	Data Entry Operator II	1347

SEC. 34. Section 73525 of the Government Code is amended to read:

73525. Subject to Section 72001, the compensation for any classification listed in Section 73523 or 73524 may be increased pursuant to the San Mateo County Salary Ordinance Resolution and Memoranda of Understanding, if any, with the recognized labor organizations representing court employees. Whenever a reference to a salary range number is made in this article, the following schedule of biweekly salaries shall apply:

Salary Range Number	Steps				
	A	B	C	D	E
1347	862.40	911.20	964.00	1019.20	1077.60
1382	884.80	935.20	988.80	1045.60	1105.60
1173	750.40	793.60	839.20	887.20	938.40
1458	932.80	986.40	1043.20	1103.20	1166.40
1345	860.80	910.40	962.40	1017.60	1076.00
1489	952.80	1008.00	1065.60	1126.40	1191.20
1525	976.00	1032.00	1091.20	1153.60	1220.00
1602	1025.60	1084.00	1146.40	1212.00	1281.60
1614	1032.80	1092.00	1155.20	1220.80	1291.20
1615	1033.60	1092.80	1155.20	1221.60	1292.00
1788	1144.00	1209.60	1279.20	1352.80	1430.40
1918	1227.20	1297.60	1372.80	1451.20	1534.40
1985	1270.40	1343.20	1420.00	1501.60	1588.00
1822	1166.40	1232.80	1304.00	1378.40	1457.60
1769	1132.00	1196.80	1265.60	1338.40	1415.20
2089	1336.80	1413.60	1494.40	1580.80	1671.20
2563	1640.00	1734.40	1833.60	1939.20	2050.40
2078	1329.60	1406.40	1487.20	1572.00	1662.40
2651	1696.80	1793.60	1896.80	2005.60	2120.80
2291	1466.40	1550.40	1639.20	1733.60	1832.80
1979	1266.40	1339.20	1416.00	1497.60	1583.20
2751	1760.80	1861,60	1968.80	2081.60	2200.80
3069	1964.00	2076.80	2196.00	2321.60	2455.20
3385	2166.40	2290.40	2422.40	2560.80	2708.00
3554	2274.00	2404.80	2543.20	2688.80	2843.20
4537	2904.00	3070.40	3246.40	3432.80	3629.60

SEC. 35. Section 73529 of the Government Code is amended to read:

73529. Official reporters shall be appointed by the judges of the court pursuant to the provisions of Section 72194 and shall serve at the pleasure of the judges.

(a) The biweekly salary of each official reporter for the performance of duties required of each reporter by law shall be at the rates specified in salary range number 2751 of the salary schedule.

At the time each reporter is hired, the salary of that reporter shall be fixed in the same manner as provided for classified employees of the county under the authority of the county charter. A step advancement from step A to step B may be granted on the first day of the pay period following completion of 26 full weeks of service in

the position. A person may advance to steps C, D, and E upon completion of successive 52-week periods of service. All merit increases as provided herein shall be made at the determination of the judges of the court.

The per diem compensation for pro tempore reporters shall be one-tenth of step E in the biweekly salary range established for official reporters, except that the rate of per diem compensation shall be pro rated on the basis of one-half day of compensation if the pro tempore reporter renders only one-half day of service.

(b) Vacation allowances and sick leave allowances for official reporters shall be the same as provided for classified employees of the county under the authority of the county charter.

(c) During the hours which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

Each official reporter shall perform the duties required of him or her by law. In addition, the reporter shall render stenographic or clerical assistance, or both, to the judge or judges of the municipal court as the judge or judges may direct.

SEC. 36. Section 73601 of the Government Code is amended to read:

73601. (a) There is one court administrator for the municipal court, who shall be appointed by the board of supervisors with the concurrence of a majority of the judges of the municipal court of the county, and who shall hold office at the judges' pleasure. The court administrator shall receive a monthly salary in the range of three thousand nine hundred forty-one dollars and sixty cents ($3,941.60) to four thousand seven hundred ninety dollars and ninety-three cents ($4,790.93).

(b) Notwithstanding subdivision (a) or any other provision of law, the board of supervisors may appoint or remove any other county officer as court administrator pursuant to the terms and conditions of an agreement approved by a majority of the judges of El Dorado County.

SEC. 37. Section 73602 of the Government Code is amended to read:

73602. The court administrator may, in accordance with the El Dorado County Personnel Rules, appoint the following employees, each of whom shall receive a monthly salary in the range specified:

	Position	Salary Range
(a)	One Administrative Services Officer	$3,069.73–$3,733.60
(b)	One Executive Secretary	$1,754.13–$2,133.73
(c)	One-half Accountant II	$2,419.73–$2,941.46
(d)	Two Court Operation Supervisors ..	$1,930.00–$2,348.00

(e)	Six Court Clerk IVs	$1,790.00–$2,177.00
(f)	Seven Court Clerk IIIs	$1,698.66–$2,064.40
(g)	Fifteen Court Clerk I/IIs	$1,435.20–$1,925.73
(h)	One-half Data Entry Clerk I/II	$1,334.66–$1,768.00

SEC. 38. Section 73644 of the Government Code is amended to read:

73644. The court administrator may appoint the following personnel:

(a) One assistant court administrator. The assistant court administrator shall serve as the assistant clerk of the court and shall receive a biweekly salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) One deputy clerk-administrative assistant I, II, III or deputy clerk-administrative services manager I or II as the case may be. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego. A deputy clerk-administrative services manager I shall receive a biweekly salary at a rate equal to that specified for administrative services manager I in the classified service of the County of San Diego. A deputy clerk-administrative services manager II shall receive a biweekly salary at a rate equal to that specified for administrative services manager II in the classified service of the County of San Diego.

(c) Three deputy clerk-division managers III each of whom shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II of the San Diego Judicial District.

(d) Five deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V of the San Diego Judicial District. A division manager II shall receive a biweekly

salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(e) Sixteen deputy clerks IV. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. One deputy clerk IV who is assigned to the presiding judge in the master calendar department shall receive a biweekly salary at a rate of 5 percent higher than that specified for the deputy clerk IV. This increased biweekly rate shall apply only during the period of this assignment and shall not apply to paid time off or to terminal payoff.

(f) Seventy-five deputy clerks III, II, I, deputy clerk-intermediate clerk typists, or deputy clerk-junior clerk typists, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to deputy clerk I may be at any step within the salary range. Up to four of these positions may be filled at the level of deputy clerk-intermediate clerk typist, or deputy clerk-junior clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. A deputy clerk-junior clerk typist shall receive a biweekly salary at a rate equal to that specified for junior clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of five deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(g) Four deputy clerk-data entry operators. No more than two of the deputy clerk-data entry operator positions may be filled at the deputy clerk-senior data entry operator level. Each of the deputy clerk-data entry operators shall receive a biweekly salary at a rate equal to that specified for data entry operator in the classified service of the County of San Diego. Each of the deputy clerk-senior data entry operators shall receive a biweekly salary at a rate equal to that

specified for senior data entry operator in the classified service of the County of San Diego.

(h) One deputy clerk-municipal court secretary who shall receive a biweekly salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

(i) Three deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(j) One deputy clerk-research attorney I, deputy clerk-research attorney II, or deputy clerk-law clerk, as the case may be. A deputy clerk-research attorney I shall receive a biweekly salary equal to that specified for a deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary equal to that specified for a deputy county counsel II in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for a law clerk in the classified service of the County of San Diego.

(k) One deputy clerk-research attorney III who shall receive a biweekly salary equal to that specified for a deputy county counsel III in the classified service of the County of San Diego. The research attorney III position shall be filled only upon a corresponding vacancy in the deputy clerk-research attorney I, deputy clerk-research attorney II, or deputy clerk-law clerk position.

(*l*) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for an administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for an administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for an administrative secretary I in the classified service of the County of San Diego.

(m) One deputy clerk-assistant, associate, or senior accountant as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for the class of assistant accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for the class of associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for the class of senior accountant in the classified service of the County of San Diego.

(n) Three deputy clerk-substance abuse assessors I or II, as the case may be. Notwithstanding subdivision (b) of Section 73649, persons appointed to these positions on or after January 1, 1990, shall serve at the pleasure of the court administrator. A deputy clerk-substance abuse assessor II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of San Diego County. A deputy clerk-substance abuse assessor I shall receive a biweekly salary at a rate 9 percent below that specified for a deputy clerk-substance abuse assessor II. Appointments to deputy clerk-substance abuse assessor I and II may be at any step within the salary range.

(o) Notwithstanding subdivision (b) of Section 73649, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(p) Notwithstanding subdivision (b) of Section 73649, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73640 to 73650, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of these classes, the county personnel director shall conduct a classification review and make recommendations to the court administrator as to the establishment of these classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months in duration. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of these positions may be established by joint action of a majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the

joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of a majority of the judges and the board of supervisors.

(q) Notwithstanding subdivision (b) of Section 73649, the court administrator may appoint up to 20 temporary extra help deputy clerk-municipal court trainees I, II, III, or V, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive an hourly salary at a rate equal to that specified for student worker V in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(r) Four deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for a deputy clerk IV. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(s) Two deputy clerk-municipal court computer specialists I, II, or III, as the case may be. A deputy clerk-municipal court computer specialist I, II, or III shall receive a biweekly salary at a rate equal to that specified for departmental computer specialist I, II, or III, respectively, in the classified service of the County of San Diego.

(t) One deputy clerk-senior systems analyst, associate systems analyst, assistant systems analyst, systems analyst trainee, or systems support analyst II, I, or trainee, as the case may be. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified

service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego. A deputy clerk-systems support analyst II shall receive a biweekly salary at a rate equal to that specified for a systems support analyst II in the classified service of the County of San Diego. A deputy clerk-systems support analyst I shall receive a biweekly salary at a rate equal to that specified for a systems support analyst I in the classified service of the County of San Diego. A deputy clerk-systems support analyst trainee shall receive a salary equal to that specified for a systems support analyst trainee in the classified service of the County of San Diego.

(u) One deputy clerk-staff development specialist or deputy clerk-staff development coordinator as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(v) Eight deputy clerks V, each of whom shall receive a biweekly salary equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities.

(w) One deputy clerk-legal assistant I or II, as the case may be. A deputy clerk-legal assistant I shall receive a biweekly salary at a rate equal to that specified for legal assistant I in the classified service of the County of San Diego. A deputy clerk-legal assistant II shall receive a biweekly salary at a rate equal to that specified for legal assistant II in the classified service of the County of San Diego.

(x) Four deputy clerk-collection officers I or II, as the case may be. A deputy clerk-collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego. A deputy clerk-collection officer II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego.

(y) Except as provided in this section, Section 74345 shall apply to the attachés appointed pursuant to this section and Section 73643.

(z) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (x), inclusive, and under Sections 73646 and 73649.1 may be increased by up to 30 additional positions by joint action of the majority of the

judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

SEC. 39. Section 73682 of the Government Code is amended to read:

73682. There shall be one municipal court administrator to be appointed by the judges of the court who shall be the clerk, administrator, and secretary of the court, and Section 71183 shall not apply. He or she shall hold office at the pleasure of the judges and shall receive a salary within Band "C" of the Fresno County Salary Resolution.

SEC. 40. Section 73683 of the Government Code is amended to read:

73683. (a) The clerk may appoint the following court personnel who shall receive a salary at the range indicated in the Fresno County Salary Resolution:

(1) One Administrative Services Assistant at salary within Band "H."

(2) One Administrative Secretary-Conf. at salary range 989.

(3) Three Senior Court Clerks at salary range 1120.

(4) Nineteen Court Clerks II at salary range 971.

(5) Nineteen Court Clerks I at salary range 867.

(6) Five Supervising Legal Process Clerks at salary range 1255.

(7) Five Senior Legal Process Clerks at salary range 1120.

(8) Ten Legal Process Clerks II at salary range 971.

(9) Ten Legal Process Clerks I at salary range 867.

(10) Thirty-eight Office Assistants III at salary range 672.

(11) Thirty-eight Office Assistants II at salary range 605.

(12) Thirty-eight Office Assistants I at salary range 497.

(13) One Court Interpreting Services Coordinator at salary range 1101.

(14) Two Court Interpreters at salary range 910.

(15) One Secretary to the Municipal Courts III at salary range 848.

(16) One Secretary to the Municipal Courts II at salary range 729.

(17) One Secretary to the Municipal Courts I at salary range 662.

(18) Four Municipal Court Division Managers at salary within Band "G."

(19) One Research Attorney III at salary range 1862.

(20) One Research Attorney II at salary range 1548.

(21) One Research Attorney I at salary range 1209.

(22) Two Systems and Procedures Analysts III at salary range 1445.

(23) Two Systems and Procedures Analysts II at salary range 1247.

(24) Two Systems and Procedures Analysts I at salary range 1008.

(b) Salary ranges indicated in paragraphs (1) to (24), inclusive, of subdivision (a) are effective December 19, 1994.

(c) The clerk may appoint any combination of court clerks, legal process clerks, and office assistants described in paragraphs (3) to (12), inclusive, of subdivision (a) not to exceed a total of 76; may appoint any combination of secretaries described in paragraphs (15) to (17), inclusive, of subdivision (a) not to exceed a total of one; may appoint any combination of research attorneys described in paragraphs (19) to (21), inclusive, of subdivision (a) not to exceed a total of one; and may appoint any combination of systems and procedures analysts described in paragraphs (22) to (24), inclusive, of subdivision (a) not to exceed a total of two.

(d) The clerk may appoint the following court personnel in the Clovis Branch who shall receive a salary at the range indicated in the Fresno County Salary Resolution:

(1) One Court Clerk II at salary range 971.

(2) One Court Clerk I at salary range 867.

(3) One Supervising Legal Process Clerk at salary range 1255.

(4) Five Legal Process Clerks II at salary range 971.

(5) Five Legal Process Clerks I at salary range 867.

(6) Five Office Assistants III at salary range 672.

(7) Five Office Assistants II at salary range 605.

(8) Five Office Assistants I at salary range 497.

(e) Salary ranges indicated in paragraphs (1) to (8), inclusive, of subdivision (d) are effective December 19, 1994.

The clerk may appoint any combination of Court Clerks described in paragraphs (1) and (2) of subdivision (d) not to exceed a total of one, and may appoint any combination of the specified number of personnel in each of paragraphs (4) to (8), inclusive, of subdivision (d) not to exceed a total of five.

SEC. 41. Section 73684 of the Government Code is amended to read:

73684. The biweekly salaries of the following classes of positions shall be in accordance with the following schedule:

Position	Range	1	2	3	4	5
Municipal Court Administrator	Band C	68825	–	–	–	94362
Municipal Court Division Manager	Band G	32606	–	–	–	49704
Administrative Services Assistant	Band H	24148	–	–	–	40719
Administrative Secretary-Confidential	989	989	1037	1089	1143	1200
Systems and Procedures Analyst III	1445	1445	1517	1593	1673	1757
Systems and Procedures Analyst II	1247	1247	1309	1374	1445	1517
Systems and Procedures Analyst I	1008	1008	1058	1111	1167	1225
Research Attorney III	1862	1862	1955	2053	2156	2264
Research Attorney II	1548	1548	1625	1706	1791	1881
Research Attorney I	1209	1209	1269	1332	1399	1469
Court Interpreter Services Coordinator	1101	1101	1156	1214	1275	1339
Court Interpreter	910	910	956	1004	1054	1107
Secretary to the Municipal Courts III	848	848	890	935	982	1031
Secretary to the Municipal Courts II	729	729	765	803	843	885
Secretary to the Municipal Courts I	662	662	695	730	767	805
Senior Court Clerk	1120	1120	1176	1235	1297	1362
Court Clerk II	971	971	1020	1071	1125	1181
Court Clerk I	867	867	910	956	1004	1054
Supervising Legal Process Clerk	1255	1255	1318	1384	1453	1525
Senior Legal Process Clerk	1120	1120	1176	1235	1297	1362
Legal Process Clerk II	971	971	1020	1071	1125	1181
Legal Process Clerk I	867	867	910	956	1004	1054
Office Assistant III	672	672	706	741	778	817
Office Assistant II	605	605	635	667	700	735
Office Assistant I	497	497	522	548	575	604

Except as specifically provided in this article to the contrary, all benefits, privileges and other provisions affecting the employment of county employees shall apply to all officers and attachés of the municipal court.

SEC. 42. Section 73691 of the Government Code is amended to read:

73691. A majority of the judges may appoint 11 full-time court reporters to serve at the pleasure of the judges and to be paid an annual salary established according to the following salary schedule:

Step 1. $42,130
Step 2. $44,241
Step 3. $46,431
Step 4. $48,753

Reporters shall initially be placed at step 1 of the salary schedule except reporters may be placed at a higher step with the approval of the county administrative officer, and shall be advanced one step annually upon the anniversary date of that employment. If, because of recruitment difficulties, it is necessary to appoint a court reporter at a step of the salary schedule which is above the step at which any court reporters are currently employed, all court reporters below that step will move to the higher step at the discretion of the judges of the court. Each such reporter shall accrue and be entitled to receive sick leave benefits at the rate of 3.6924 hours of sick leave with pay for each pay period or major fraction thereof, served up to an accumulative total of 156 working days. Each such reporter shall accrue and receive vacation at the same rate as judges of that court not to exceed 21 working days a year which may be accrued not to exceed 42 days to be taken at such time as the judge to which he or she has been assigned consents.

SEC. 43. Section 73692 of the Government Code is amended to read:

73692. Pursuant to Section 72194, the judges of the court may appoint as many additional reporters as the business of the court requires, who shall be known as official reporters pro tempore. They shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in the section for reporting testimony and proceedings the official reporters pro tempore shall be paid in accord with the following:

Each pro tempore reporter shall be paid one hundred sixty-two dollars and four cents ($162.04) for a full day on duty under order of the court. For purposes of receiving the above compensation, one or more of the following shall apply:

(1) The court has indicated in advance that the pro tempore assignment is for a full day.

(2) The pro tempore reporter was on duty for more than four hours.

Each pro tempore reporter shall be paid one hundred eight dollars and seven cents ($108.07) for one-half day of duty under order of the court when (a) the court has indicated in advance that the pro tempore assignment is for a half day and the pro tempore reporter is on duty for four hours or less, generally exclusive of the noon recess; or (b) the court has indicated in advance that the pro tempore assignment is for a full day but the pro tempore reporter is on duty for four hours or less and consents to being released for the balance of the day.

Where a pro tempore reporter has agreed to a one-half day assignment, the courts shall make every practicable effort to assure that the pro tempore reporter shall not be on duty for longer than four hours, unless the pro tempore reporter agrees with the court to work beyond four hours. In the latter case, the full-day pro tempore rate of one hundred sixty-two dollars and four cents ($162.04) shall apply.

Nothing herein shall be construed to limit the court's authority to in all instances pay a pro tempore reporter at the rate of one hundred sixty-two dollars and four cents ($162.04) when, in the court's judgment, that rate is necessary to obtain pro tempore reporter services for the court.

The above payments shall upon order of the court be a charge against the general fund of the county.

SEC. 44. Section 73695 of the Government Code is amended to read:

73695. Interpreters appointed by the court pursuant to Section 68092 shall be allowed for each day's actual attendance upon the court when legally required, such fee as may be allowed by the court not to exceed one hundred twenty dollars ($120) per day or seventy-five dollars ($75) per half day. Where an interpreter has worked beyond 5 p.m., the interpreter will be paid at an additional rate of ten dollars ($10) per hour for all hours or portions thereof worked after 5 p.m. An interpreter employed in a permanent or extra help position shall be paid at an additional rate of one and one-half times the regular hourly rate of pay for all hours or portions thereof worked beyond eight hours in a day.

SEC. 45. Section 73699.1 of the Government Code is amended to read:

73699.1. (a) The court administrator may, in consultation with the judges of the court, appoint the following court personnel who shall be compensated pursuant to Sections 73684, 73685, 73686, and 73687:

(1) Eighteen office assistants I, II, or III, who shall receive a salary specified in range 497, 605, or 672, respectively.

(2) Thirty-four legal process clerks I or II, who shall receive a salary specified in range 867 or 971, respectively.

(3) Eight supervising legal process clerks, who shall receive a salary specified in range 1255.

(b) The court administrator may appoint any combination of legal process clerks and office assistants, not to exceed a total of 49. Whenever the business of the court or other emergency requires a greater number of employees or a reclassification of employees in order to effectively carry out the duties and functions of the court, the court administrator may, with the approval of the board of supervisors, establish new positions or reclassify existing positions and appoint such additional employees as may be necessary, each appointment to remain in effect only until January 1 of the second fiscal year following the fiscal year in which the appointment was made, unless subsequently ratified by the Legislature. The order establishing such positions shall designate the position, title, and salary range.

(c) Whenever reference is made to a numbered salary range or lettered salary band in any section of this article, the schedule of hours, rates of pay, and approximate monthly equivalents found in the Fresno County Salary Resolution in effect on the effective date of this article shall apply.

(d) If the board of supervisors adopts a revised salary resolution for county employees or applies new salary range numbers for the purpose of salary adjustment, the new salary rates shall apply equally to the positions named in this article. Any salary adjustment made pursuant to this section shall be effective on the same date as the action applicable to other county permanent classified employees, but shall remain in effect only until January 1 of the second fiscal year following the fiscal year in which such adjustment in salary is made, unless subsequently ratified by the Legislature.

(e) Any officer or attaché of the court who receives a promotion to a position having an overlapping salary range shall be placed upon the step of the new salary range as provided by the Fresno County Salary Resolution.

SEC. 46. Section 73705 of the Government Code is amended to read:

73705. The clerk may appoint:

(a) Two deputy clerks III.

(b) Eleven deputy clerks II.

(c) Eleven deputy clerks I.

SEC. 47. Section 73708 of the Government Code is repealed.

SEC. 48. Section 73710 of the Government Code is amended to read:

73710. Persons employed in any of the positions authorized by this article shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule contained in Section 73709, except that if the range shown opposite the title of the position includes a fraction then the person employed in such position shall be paid a salary equal to that opposite that fractional range in the salary ordinance of the County of San Joaquin.

	Position	Range
(a)	Deputy clerk I	50.00
(b)	Deputy clerk II	52.00
(c)	Clerk Administrator	65.70
(d)	Deputy clerk III	53.50

Subject to the provisions of the salary ordinance of the County of San Joaquin, each person employed in the clerk's office may receive an annual increase in salary of one step on his or her assigned range, until the employee reaches the maximum step on the range assigned for his or her position. Thereafter, no additional step increase shall be granted.

SEC. 49. Section 73713 of the Government Code is amended to read:

73713. Whenever the salary of a related class or classes of San Joaquin County employees is adjusted, the salary of the following classes may be adjusted by a percentage not to exceed the percentage of adjustment granted to the class or classes deemed by the board of supervisors to be related:

(a) Deputy clerk I.
(b) Deputy clerk II.
(c) Clerk Administrator.
(d) Deputy clerk III.

All adjustments to the salaries of the above-named classes shall be effective as of the same date as the adjustment for the class, or classes, deemed to be related, and shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

SEC. 50. Section 73714 of the Government Code is amended to read:

73714. Notwithstanding any other provision of law, the provisions of the county ordinance relating to civil service and the rules of the county civil service commission adopted pursuant thereto, shall apply to all employees in the same manner and to the extent as applicable generally to officers and employees of the County of San Joaquin.

Such employees shall be entitled to the same vacation, sick leave, and other employee benefits and may be appointed, promoted, demoted, terminated, or transferred, or their status otherwise adjusted in the same manner and with the same effect as is or may be provided by the current salary ordinance of the County of San Joaquin, or the civil service ordinance of the County of San Joaquin for the employees of the county.

SEC. 51. Section 73715 of the Government Code is repealed.

SEC. 52. Section 73716.2 of the Government Code is repealed.

SEC. 53. Section 73736 of the Government Code is amended to read:

73736. The clerk-administrator may appoint:

(a) One chief deputy municipal court clerk administrative who shall receive a monthly salary at a rate specified in range 272.

(b) Four municipal court clerks III, each of whom shall receive a monthly salary at a rate specified in range 170.

(c) Ten municipal court clerks II, each of whom shall receive a monthly salary at a rate specified in range 155.

(d) Six municipal court clerks I, each of whom shall receive a monthly salary at a rate specified in range 137.

(e) One court reporter, who shall receive a monthly salary rate specified in range 282.

(f) Two interpreters, each of whom shall receive a monthly salary at a rate specified in range 179.

(g) One accounting supervisor, who shall receive a monthly salary at a rate specified in range 202.

(h) Six municipal court clerk supervisors, each of whom shall receive a monthly salary at a rate specified in range 197.

(i) One account clerk III, who shall receive a monthly salary at a rate specified in range 151.

(j) One account clerk II, who shall receive a monthly salary at a rate specified in range 133.

(k) One legal office assistant II, who shall receive a monthly salary at a rate specified in range 165.

(*l*) One court computer coordinator, who shall receive a monthly salary at a rate specified in range 239.

SEC. 54. Section 73822 of the Government Code is amended to read:

73822. There is one court administrator for the municipal court, who shall be appointed by the judges of the court, and who shall hold office at the judges' pleasure. The court administrator shall receive a monthly salary in the range of three thousand two hundred ninety-one dollars and fifty-two cents ($3,291.52) to four thousand dollars and eighty-seven cents ($4,000.87).

SEC. 55. Section 73823 of the Government Code is amended to read:

73823. The court administrator may, in accordance with the Nevada County Personnel Rules, appoint the following employees, each of whom shall receive a monthly salary in the range specified:

Position	Salary Range
2 Supervising Municipal Court Assistants– range 154	$1,901.69 to $2,311.51
5 Municipal Court Assistants II – range 104	$1,490.03 to $1,811.13
or III – range 124	$1,642.75 to $1,996.78
16 Municipal Court Assistants I – range 74	$1,287.13 to $1,564.53
or II – range 104	$1,490.03 to $1,811.13

1 Municipal Court Assistant I, 50% time –	
range 74	$ 643.57 to $ 782.67
or II, 50% time – range 104	$ 745.02 to $ 905.57
1 Judicial Secretary – range 35	$1,733.35 to $2,106.90

SEC. 56. Section 73954 of the Government Code is amended to read:

73954. The court administrator may appoint:

(a) One assistant court administrator at the direction of a majority of the judges of the court who shall serve at the pleasure of the majority of the judges. The biweekly salary of the assistant court administrator shall be within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary and any advancement or reduction within the range shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator." A person shall not be appointed to the class of assistant court administrator if all three deputy court administrator positions are filled.

(b) Three deputy court administrators, who shall serve at the pleasure of the court administrator. The deputy court administrators shall receive a salary within the biweekly range ES-6 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with Article 3.5 of the Compensation Ordinance of the County of San Diego and subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall mean "the court administrator." Notwithstanding subdivision (b) of Section 73957, persons who hold the position of deputy clerk-administrative services manager I or deputy clerk division manager III on January 1, 1995, may be appointed by the court administrator to the position of deputy court administrator without further examination, subject to certification by the court administrator that the person possesses the minimum qualification and necessary skills to perform the duties of the position. The deputy court administrator positions shall be filled only upon the equivalent number of corresponding vacancies in the positions denoted in subdivision (c), (d), or (*l*).

(c) Two deputy clerk-division managers III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division managers II.

(d) Four deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(e) Ten deputy clerks V, who shall receive a salary at a rate equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities.

(f) Twenty-five deputy clerks IV, or senior deputy clerks, as the case may be. Each deputy clerk IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed three positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for a deputy clerk IV. The duties of the class of senior deputy clerk shall be those of a courtroom clerk and shall include supervisory responsibilities. One deputy clerk IV who is assigned to the presiding judge in the master calendar department may receive a biweekly salary at a rate of 5 percent higher than that specified for the deputy clerk IV. This increased biweekly rate shall apply only during the period of this assignment and shall not apply to paid time off or to terminal payoff.

(g) One hundred deputy clerks III, II, I, or deputy clerk-intermediate clerk typists as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I class may be at any step within the salary range. Up to four of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of five deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the

supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(h) One deputy clerk-municipal court secretary. A deputy clerk-municipal court secretary shall receive a biweekly salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. Appointments to the class of deputy-clerk municipal court secretary may be at any step within the salary range at the discretion of the court administrator.

(i) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(j) Five deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(k) One deputy clerk-interpreter coordinator, or deputy clerk-interpreter supervisor, as the case may be. A deputy clerk-interpreter coordinator shall receive a biweekly salary at a rate equal to that specified for deputy clerk V. A deputy clerk-interpreter supervisor shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. Appointments to deputy clerk interpreter-coordinator or deputy clerk-interpreter supervisor may be at any step within the salary range at the discretion of the court administrator.

(*l*) One deputy clerk-administrative assistant I, II, or III, or deputy clerk-administrative services manager I or II, as the case may be. The deputy clerk-administrative assistant I, II, or III, shall receive a biweekly salary at a rate equal to that specified for administrative assistant I, II, or III, respectively, in the classified service of the County of San Diego. The deputy clerk-administrative services manager I, shall receive a biweekly salary at a rate equal to that specified for administrative services manager I in the classified service of the County of San Diego. The deputy clerk-administrative services manager II shall receive a biweekly salary at a rate equal to that specified for administrative services manager II in the classified service of the County of San Diego.

(m) Five deputy administrative clerks III, II, or I, as the case may be. Each deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for a deputy clerk IV. Each deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. Each deputy

administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(n) One deputy clerk-senior, associate, or assistant accountant, as the case may be. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service in the County of San Diego. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego.

(o) One deputy clerk-assistant, or junior accountant, as the case may be. The deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for an assistant accountant in the classified service of the County of San Diego. The deputy clerk-junior accountant shall receive a biweekly salary at a rate equal to that specified for a junior accountant in the classified service of the County of San Diego.

(p) Two deputy clerk-research attorney I, deputy clerk-research attorney II, or deputy clerk-law clerk, as the case may be. Persons appointed to either of these positions on or after January 1, 1991, shall serve at the pleasure of the court administrator. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary at a rate equal to that specified for deputy county counsel II in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for law clerk in the classified service of the County of San Diego.

(q) One deputy clerk-staff development specialist or deputy clerk-staff development coordinator as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(r) One deputy clerk-senior systems analyst, associate systems analyst, assistant systems analyst, or systems analyst trainee as the case may be. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified

for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(s) Five deputy clerk-court referral officers I or deputy clerk-court referral officers II, as the case may be. Notwithstanding subdivision (b) of Section 73957, persons appointed to these positions shall serve at the pleasure of the court administrator. The deputy clerk-court referral officer II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of the County of San Diego. A deputy clerk-court referral officer I shall receive a biweekly salary at a rate of 9 percent below that specified for a deputy clerk-court referral officer II. Appointments to deputy clerk-court referral officer I and deputy clerk-court referral officer II may be at any step within the salary range.

(t) One deputy clerk-municipal court computer specialist I, II, or III, as the case may be. A deputy clerk-municipal court computer specialist I, II, or III shall receive a biweekly salary at a rate equal to that specified for departmental computer specialist I, II, or III, respectively, in the classified service of the County of San Diego.

(u) One deputy clerk-data entry supervisor. A deputy clerk-data entry supervisor shall receive a biweekly salary at a rate equal to that specified for data entry supervisor in the classified service of the County of San Diego.

(v) Ten deputy clerk-data entry operators. A deputy clerk-data entry operator shall receive a biweekly salary at the rate equal to that specified for data entry operator in the classified service of the County of San Diego.

(w) Five deputy clerk-collection officers I, II, or III, as the case may be. Each deputy clerk-collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego. Each deputy clerk-collection officers II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego. Each deputy clerk-collection officer III shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer III in the classified service of the County of San Diego.

(x) Notwithstanding subdivision (b) of Section 73957, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 120

working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(y) Notwithstanding subdivision (b) of Section 73957, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73950 to 73960, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of these classes, the county personnel director shall conduct a classification review and make recommendations to the court administrator as to the establishment of these classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the range proposed for the class pending establishment at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months in duration. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of these positions may be established by joint action of a majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of a majority of the judges and the board of supervisors.

(z) Notwithstanding subdivision (b) of Section 73957, the court administrator may appoint up to 20 temporary extra help deputy clerk-municipal court trainees I, II, III, or V who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate

equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive an hourly salary at a rate equal to that specified for student worker V in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(aa) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 73953.

(ab) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (w), inclusive, (y), and (z) and under Sections 73959, 73960, and 73960.1 may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

SEC. 57. Section 74001.5 of the Government Code is amended to read:

74001.5. The judges of the Central Orange County Judicial District may appoint two court commissioners. The judges of the Orange County Harbor Judicial District may appoint two court commissioners. The judges of the North Orange County Judicial District may appoint two court commissioners, provided that at such time as the board of supervisors finds that there are sufficient funds for one additional court commissioner and adopts a resolution to that effect, there shall be three court commissioners. The judges of the South Orange County Judicial District may appoint one court commissioner, provided that at such time as the board of supervisors finds that there are sufficient funds for up to three additional court commissioners and adopts a resolution or resolutions to that effect, there shall be up to four court commissioners. The judges of the West

Orange County Judicial District may appoint two court commissioners.

The commissioners shall have the additional powers and duties prescribed by Section 259 of the Code of Civil Procedure. The commissioners shall possess the same qualifications as the law requires of a judge of the municipal court. The commissioners shall hold office at the pleasure of the judges and shall receive a monthly salary in the same sum as is paid a commissioner of the Orange County Superior Court. The commissioners shall be ex officio deputy clerks of the court and shall be members of any retirement system which includes the attachés of the court. The commissioners shall not engage in the private practice of law.

SEC. 58. Section 74002 of the Government Code is amended to read:

74002. (a) There shall be one executive officer-municipal court for each judicial district who shall serve as the clerk and administrative officer and who shall be appointed by, and serve at the pleasure of, a majority of the judges of the court, or in the case of an equal division of the judges of the court, the senior judge of the court, and who shall receive an annual salary within salary range ML-E as determined jointly by the Judges Personnel Committee and board of supervisors. Commencing June 26, 1992, the salary for executive officers shall be uniform among the courts.

(b) Each executive officer-municipal court may appoint one assistant executive officer-municipal court who shall receive an annual salary as determined jointly by the Judges Personnel Committee and board of supervisors.

(c) The salaries set pursuant to this section shall be on an interim basis and shall expire on January 1 of the second year following the year in which the salary is set.

SEC. 59. Section 74004 of the Government Code is amended to read:

74004. (a) The number of positions within each job classification which may be filled by appointment by the executive officer/clerk, respectively, of each court, and the number of the salary range set forth in Section 74005 which constitutes the compensation for each job classification, are shown in the table below, in which the various municipal courts are designated by column headings from left to right, in the same order as that in which their judicial districts are named in Section 74000:

Class Code	Title	Salary Range	NOC	COC	WOC	OCH	SOC
0359	Collection Officer, MC	A-47	0	0	1	0	0
0487	Data Entry Supervisor II	D-44	0	2	0	2	0

0504	Office Assistant ..	D-33	0	9	0	0	0
0514	Office Supervisor B	D-42	1	0	0	0	0
0521	Office Supervisor C	D-44	11	0	0	6	0
0523	Office Supervisor D	D-46	2	8	9	2	9
0526	Sr. Office Supv. C/D	D-50	4	5	4	4	4
0536	Office Specialist .	D-39	0	0	2	0	1
0416	Data Entry Tech., MC	D-37;S/3	14	14	13	11	9
0414	Data Entry Specialist MC ...	D-39;S/2	0	2	0	0	1
0566	Judicial Secretary I, MC	D-40;S/2	1	3	0	1	1
0569	Judicial Secretary II, MC	D-44	2	0	0	1	0
0570	Executive Secretary, MC ...	D-48	1	2	2	0	2
0439	Secretary II, MC .	D-40	0	1	0	0	0
0442	Secretary III, MC	D-44	0	0	0	1	0
0703	Appeals Clerk, MC	D-33	0	0	0	0	0
0705	Deputy Clerk I, MC	D-35;S/5	11	0	0	3	0
0708	Deputy Clerk II, MC	D-35;S/3	10	0	0	4	0
0709	Court Processing Spec. II	D-39	59	73	73	60	66
0711	Deputy Clerk III, MC	D-40	0	0	0	2	0
0712	Judicial Assistant, MC	D-52	2	2	1	1	1
0713	Senior Judicial Assistant, MC ...	D-54	1	1	1	1	1
0714	Deputy Clerk IV, MC	D-42	0	0	0	0	0
0718	Supv. Deputy Clerk I, MC	D-43	0	0	0	0	0
0719	Supv. Deputy Clerk II, MC	D-46	0	0	0	0	0
0721	Sr. Courtroom Clerk, MC	D-54	2	2	1	2	1
0725	Division Manager II, MC	E-58	6	5	6	6	6

0740	Staff Development Spec., MC .	A-56	0	1	1	0	0
0741	Electronic Recording Monitor	D-37	3	0	0	0	0
0742	Certified Court Interpreter, MC	A-48	1	0	2	2	0
0745	Courtroom Clerk, MC	D-50	24	28	21	15	14
2381	MC Judicial Hearing Officer .	E-65	0	2	0	0	0
2387	Traffic Trial Commissioner	2387-F	1	0	0	0	3
7509	Detention Rel. Officer	A-57; S/3	0	8	0	0	0
7510	Sr. Detention Rel. Officer	A-59	0	6	0	0	0
7511	Supvs. Detention Rel. Officer	A-63	0	1	0	0	0
7904	Info. Systems Trainee II	A-49	0	0	0	0	1
7906	Technical Systems Specialist	A-67	0	1	1	0	0
7918	Info. Systems Tech. II, MC	A-55	0	0	0	0	0
7918	Info. Systems Tech., MC	A-55	0	3	0	0	1
0454	Systems/Prog. Analyst I, MC ...	A-60	1	1	0	1	1
7922	Systems/Prog. Analyst II, MC ...	A-64	1	1	1	0	2
0729	Sr. Systems/Prog. Analyst, MC	A-70	1	1	1	1	1
7971	Information Systems Manager ...	ML-06	0	1	0	0	0
8005	Sr. Staff Analyst .	ML-5	2	2	2	2	2
8449	ASA Municipal Court	E-63	0	1	0	1	1
8542	Staff Assistant ...	A-47	0	4	1	0	2
	TOTAL		161	190	143	129	130

(b) The Legislature finds and declares that the matter of appointing, promoting, demoting, and dismissing persons in positions with the municipal courts and all other aspects of the personnel management of municipal courts of Orange County is one for local concern. It further finds and declares that wherever possible personnel management may grant to persons in positions with the municipal courts similar treatment with persons in positions with the

Orange County who are performing similar duties and who possess similar qualifications.

(c) To achieve the legislative intent expressed in subdivisions (a) and (b), the municipal courts of Orange County may create a personnel committee consisting of five judges selected one from each court by a majority vote of the judges of the respective courts, or where there is an equal division of the judges of a court, by the senior judge of that court. The personnel committee may adopt rules and regulations providing for a personnel system for all municipal courts of Orange County which may provide for similar treatment for employees and attachés of the several courts as is provided for Orange County employees generally. In so providing for a personnel system, the judges may adopt all or any part of the personnel and salary resolution or appropriate memoranda of understanding of the Orange County.

(d) With the approval of the board of supervisors, the personnel system adopted by the personnel committee and made applicable to all the municipal courts of Orange County may be administered by the Orange County through its personnel department. The board of supervisors may withdraw its approval at any time.

(e) If an increase in the business of the court or any other emergency requires a greater number of attachés or employees for the prompt and faithful discharge of the business of the court than the number expressly provided in this article or requires the performance of duties of positions in a class not expressly provided in this article, a majority of the judges of any of the courts, with the approval of the board of supervisors, may establish additional titles, pay rates, and positions as they deem necessary for the performance of the duties and exercise of the powers conferred by law upon the courts. Rates of compensation of other officers, attachés, and employees may be set by joint action and approval of the board of supervisors and a majority of the municipal court judges of Orange County. The establishment of additional titles, positions, and pay rates and changes in compensation made pursuant to this subdivision shall be on an interim basis and shall expire on January 1 of the second year following the year in which that establishment or change is made. The provisions of this section are directory only and are not intended to affect the application of Section 72150.

SEC. 60. Section 74010 of the Government Code is amended to read:

74010. (a) There shall be one marshal, designated as the Marshal of Orange County, for the superior and municipal courts established in Orange County. The marshal shall serve at the pleasure of a majority of the judges of the superior and municipal courts in the county.

The salary range of the marshal shall be 10 percent higher than the salary range of the assistant marshal, and the marshal's salary shall be

determined by the Joint Marshal Personnel Committee within that range.

(b) The marshal shall possess the rights and powers and perform the duties imposed upon marshals of courts generally and, when so authorized by the board of supervisors pursuant to Section 74007, within Orange County, shall exercise all powers and perform all duties imposed upon sheriffs with respect to proceedings in the superior court.

(c) Whenever a vacancy occurs in the position of Marshal of Orange County, the judges of the superior court and all the municipal courts in Orange County by a majority vote of their aggregate number, shall select and appoint the marshal under such organization, rules, and procedures as they adopt or ratify therefor. Discharge of the marshal shall be by majority vote of the judges of the municipal courts and the superior court.

(d) There shall be one assistant marshal, appointed by and serving at the pleasure of the marshal. This appointment shall require the concurrence of a majority of the members of the Joint Marshal Personnel Committee. Discharge of the assistant marshal shall be at the direction of the marshal and shall require the concurrence of a majority of the members of the Joint Marshal Personnel Committee. Upon discharge from the position of assistant marshal the employee has the right to return to a non-executive management position in a lower class (or its equivalent) in which the employee passed probation prior to becoming the assistant marshal. An individual who enters the position of assistant marshal from outside the Marshal's Department of Orange County shall have no right to a lower level position. The right to return to a lower class position shall not be applicable if the discharge is for a reason or reasons which would otherwise preclude an individual from being a peace officer.

(e) The salary range of the assistant marshal shall be 20 percent higher than the range of captain in the marshal's department. The salary of the assistant marshal may be adjusted annually, within its range, by the marshal with concurrence of the Joint Marshal Personnel Committee.

(f) The establishment of any range higher than provided above for the marshal and assistant marshal shall be effective only until January 1 of the second year following the year in which the establishment or change is made.

(g) A branch office of the Marshal of Orange County shall be maintained in each superior and municipal court district facility, except where those facilities are shared, in which case one office may serve the needs of both courts.

SEC. 61. Section 74011 of the Government Code is amended to read:

74011. (a) The Legislature finds and declares that the matter of appointing, promoting, demoting, and dismissing persons in positions in the marshal's department and all other aspects of the personnel

management of the Marshal of Orange County is one of local concern. It further finds and declares that, wherever possible, personnel management may grant to persons in positions with the marshal's department similar treatment with persons in positions with the County of Orange who are performing similar duties and who possess similar qualifications.

(b) To achieve this legislative intent, the courts of Orange County shall create a personnel committee consisting of five judges, who will comprise the Joint Marshal Personnel Committee. There shall be two judges representing the municipal courts selected by a majority vote of the judges on the Municipal Court Judges Personnel Committee. There shall be two judges representing the superior court selected by a majority vote of the members of the Superior Court Marshal's Personnel Committee. The fifth member of the committee shall be selected by a majority vote of the aforementioned four members and may be selected from judges of either the municipal or superior court. If the four members cannot agree upon a fifth member, then the fifth member shall be selected by the judges of the superior court and the judges of the municipal courts in Orange County by a majority vote of their aggregate number. The five members shall, by majority vote, select one member to act as the committee's chair. The selection of the members of the Joint Marshal Personnel Committee shall occur no later than the 31st of January of each year with the term of office to be one year. Vacancies that occur within the term of appointment shall be filled by the original appointing body.

(c) The Joint Marshal Personnel Committee may adopt rules and regulations for a personnel system for employees of the marshal's department. The Joint Marshal Personnel Committee shall hear all grievances referred to step 3 of a grievable action. The Joint Marshal Personnel Committee may adopt all or any part of the personnel and salary resolution or appropriate memoranda of understanding of the County of Orange. The Joint Marshal Personnel Committee may, by majority vote, make policies and adopt procedures pertaining to the operations of the marshal's department. Except as provided in this section, provisions relating to compensation or benefits shall require the concurrence of the board of supervisors.

(d) The first one year served by a deputy marshal, court services officer, administrative manager, lieutenant or captain appointee, and the first six months served by any other appointee, shall be considered a probationary period, except for appointment to classes of positions serving at the pleasure of the appointing authority. The marshal shall have the power to dismiss without cause, in the case of a new employee, or to demote without cause, in the case of a promoted employee, during that probationary period.

(e) With the approval of the board of supervisors, the personnel system adopted by the Joint Marshal Personnel Committee may be administered by the County of Orange through its personnel department.

SEC. 62. Section 74012 of the Government Code is amended to read:

74012. The marshal may make the following appointments at the designated salary ranges:

Title of Job Classification	Applicable Pay Range Number	Number of Positions Authorized
Captain	MM2	2
Lieutenant	MM1	9
Sergeant	P11	22
Marshal's Investigator II	P9 S/3	7
Marshal's Investigator I	P6 S/3	13
Deputy Marshal II	P3	24
Deputy Marshal I	P1	220
Court Services Officer	A46	58
Senior Court Services Officer	A50	4
Administrative Manager I	ML6	1
Systems/Programmer Analyst II—Marshal	A64	2
Secretary III—Marshal	D44	1
Executive Secretary I—Marshal	D48	1
Supervising Clerk III—Marshal	D45	1
Supervising Clerk II—Marshal	D42	1
Senior Chief Clerk—Marshal	D48	1
Chief, Civil Process	D50	5
Civil Process Supervisor	D44	5
Civil Process Technician	D39	34
Information Processing Technician—Marshal	D37 S/3	9
Clerk III, Marshal	D38	2
Clerk II, Marshal	D35 S/3	2
Marshal's Technician	D38	11
Radio Dispatcher—Marshal	A50	2
Deputy Marshal Trainee	PA S/12	6
Investigation Aide—Marshal	D38	1
Micrographics Technician I—Marshal	H04	1
Accounting Assistant II—Marshal	D36 S/3	1

Office Technician—Marshal	D33 S/5	1
Senior Systems/Programmer Analyst	A70	2

SEC. 63. Section 74013 of the Government Code is amended to read:

74013. (a) It is the intent of the county to maintain parity in salary and benefits between those employees in the marshal's department and employees in the same or comparable classes for other departments. When the salary of a class in the service of Orange County is adjusted by the board of supervisors, the salary of the equivalent class in the marshal's department shall be adjusted in the same amount and at the same time. Salaries for classes not considered equivalent shall be adjusted based on internal relationships and other criteria customarily used in setting salaries in other county classes. In the event that a system of merit pay increases is established by the County of Orange for employees, merit increases, if justified, may be authorized by the Joint Marshal Personnel Committee for employees with similar qualifications and experience in equivalent classifications. Designation of certain classes as equivalent positions shall be as follows, except that their designation as equivalent positions may be changed or deleted at any time following a classification study and an agreement between the county and the Joint Marshal Personnel Committee:

Marshal Classification	County Classification
Management	
Captain, Marshal's Department	Captain
Lieutenant, Marshal's Department	Lieutenant
Safety Members	
Sergeant, Marshal's Department	Sergeant
Marshal's Investigator II	Investigator
Marshal's Investigator I	Investigator (less three salary ranges)
Deputy Marshal II	Deputy Sheriff II
Deputy Marshal I	Deputy Sheriff I
Deputy Marshal Trainee	Deputy Sheriff Trainee

General Classes

Administrative Manager I-Marshal	Administrative Manager I
Radio Dispatcher-Marshal	Radio Dispatcher
Senior Systems/Programmer Analyst	Senior Systems Programmer Analyst
Systems/Programmer Analyst II-Marshal	Systems/Programmer Analyst II
Investigation Aid-Marshal	Investigation Aid-Sheriff

Clerical Classes

Executive Secretary I-Marshal	Executive Secretary I
Secretary III-Marshal	Secretary III
Supervising Clerk III-Marshal	Office Supervisor D (less one salary range)
Supervising Clerk II-Marshal	Office Supervisor B
Civil Process Supervisor-Marshal	Office Supervisor B
Civil Process Technician-Marshal	Office Specialist
Clerk III-Marshal	Office Specialist (less one salary range)
Clerk II-Marshal	Information Processing Specialist I
Accounting Assistant II-Marshal	Accounting Assistant II
Office Technician-Marshal	Office Technician
Information Processing Technician-Marshal	Information Processing Technician
Micrographics Processing Technician-Marshal	Micrographics Processing Technician

Positions in these classes within the marshal's department shall not be paid less salary than positions in equivalent county classifications.

(b) If an increase in the business of the court or any other business necessity requires a greater number of attachés or employees for the prompt and faithful discharge of the business of the court than the number expressly provided in this article, or requires the performance of duties of positions in a class not expressly provided in this article, the Joint Marshal Personnel Committee, with the approval of the board of supervisors, may establish additional titles,

pay rates, and positions as they deem necessary for the performance of the duties and exercise of the powers conferred by law upon the court. Rates of compensation of these officers, attachés, and employees may be set by joint action and approval of the board of supervisors and the Joint Marshal Personnel Committee. The establishment of additional titles, positions, and pay rates and changes in compensation pursuant to this subdivision shall be effective only until January 1 of the second year following the year in which the establishment or change is made. This section shall not affect the appointment of additional deputy marshals pursuant to Section 72150.

SEC. 64. Section 74014 of the Government Code is amended to read:

74014. The assignment of persons holding the positions of deputy marshal I or court services officer to individual courtrooms shall be made by the marshal with the concurrence of the individual judge in whose courtrooms the assignment is to be made and shall be consistent with local rules and procedures. Each deputy or officer shall serve in that assignment at the pleasure and under the direction of that judge.

SEC. 65. Section 74141 of the Government Code is amended to read:

74141. In the Mt. San Jacinto Judicial District the salary of the clerk/administrator—Mt. San Jacinto Judicial District shall be on range 412, and the clerk/administrator may appoint:

(a) One staff analyst I on range 277.

(b) One assistant clerk/administrator—Mt. San Jacinto on range 348.

(c) Two municipal court branch administrators II on range 323.

(d) Twenty-one judicial office assistants on range 212.

(e) Three judicial services supervisors on range 272.

(f) Six judicial courtroom assistants on range 253.

(g) One senior accounting clerk on range 215.

(h) Two senior judicial office assistants on range 233.

(i) One executive secretary I on range 265.

(j) One administrative services officer on range 342.

(k) One judicial secretary on range 265.

(*l*) One municipal court branch administrator I on range 288.

(m) Two programmer/analysts IV on range 342.

(n) Two senior judicial courtroom assistants on range 268.

(o) One senior programmer/analyst on range 358.

SEC. 66. Section 74143 of the Government Code is amended to read:

74143. In the Three Lakes Judicial District, the salary of the clerk/administrator—Three Lakes Judicial District shall be on range 412, and the clerk/administrator may appoint:

(a) Two municipal court branch administrators II on range 323.

(b) Fifteen judicial office assistants on range 212.

(c) Four judicial services supervisors on range 272.
(d) Six judicial courtroom assistants on range 253.
(e) Three senior judicial office assistants on range 233.
(f) One senior judicial courtroom assistant on range 268.
(g) One executive secretary I on range 265.
(h) One judicial secretary on range 265.

SEC. 67. Section 74207 of the Government Code is amended to read:

74207. There shall be one clerk/administrator who shall be appointed by the judge of the court and who shall be clerk of the court. The clerk/administrator shall receive a biweekly salary at a rate specified in range 2056. The position of clerk/administrator shall not be deemed to be a civil service position.

SEC. 68. Section 74208 of the Government Code is amended to read:

74208. There shall be the following positions for which the appointing authority shall be the clerk/administrator:

(a) Two court process specialists who shall receive a biweekly salary at a rate specified in range 1179.

(b) One senior court process clerk who shall receive a biweekly salary at a rate specified in range 1118.

(c) Three associate court process clerks II who shall receive a biweekly salary at a rate specified in range 996.

(d) One municipal courtroom clerk II who shall receive a biweekly salary at a rate specified in range 1426.

(e) One half court process specialist who shall receive a biweekly salary at a rate specified in range 1179.

(f) One accounting technician who shall receive a biweekly salary at a rate specified in range 1347. The position of accounting technician shall not be deemed a civil service position.

SEC. 69. Section 74344 of the Government Code is amended to read:

74344. The court administrator may appoint:

(a) One assistant court administrator, with the consent of a majority of the judges of the court, who shall be empowered to act in the place and stead of the court administrator in the event that the court administrator is absent or unavailable for any reason. Persons appointed to this position on or after January 1, 1991, shall serve at the pleasure of the court administrator. The assistant court administrator shall receive a biweekly salary within the biweekly rate range ES-12 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation

Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) Four deputy court administrators, with the consent of a majority of the judges of the court, one of whom shall be empowered to act in the place and stead of the assistant court administrator in the event that the assistant court administrator is absent or unavailable for any reason. Persons appointed to these positions on or after January 1, 1991, shall serve at the pleasure of the court administrator. A deputy court administrator shall receive a salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(c) Four deputy clerk-division managers III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II. Two of these positions may be designated as principal managers. When a position is designated principal manager, the incumbent shall receive a bonus of 10 percent.

(d) Six deputy clerk-division managers II or deputy clerk-division managers I as the case may be. A deputy clerk-division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V. A deputy clerk-manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V.

(e) Thirteen deputy clerks V each of whom shall receive a biweekly salary at a rate 32.6 percent higher than that specified for deputy clerk III.

(f) One deputy clerk V or deputy clerk-division manager I may be designated as calendar coordinator by the court administrator and shall receive a bonus of 20.5 percent or 10.5 percent, respectively.

(g) Sixty-seven deputy clerk-senior deputy clerks or deputy clerks IV, as the case may be. A deputy clerk IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerks in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed 17 positions. A senior deputy clerk shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities or special assignments.

(h) Two hundred six deputy clerks III, II, or I, or deputy clerk-intermediate clerk typists as the case may be. Each deputy

clerk III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each deputy clerk I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. Appointments to deputy clerk I may be at any step within the salary range at the discretion of the court administrator. The class of deputy clerk-intermediate clerk typist shall not exceed 10 positions. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of nine deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(i) Four deputy clerk-senior, associate, or assistant accountants, as the case may be. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego.

(j) Eleven deputy clerk-court interpreters, each of whom shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(k) One deputy clerk-senior staff interpreter who shall receive a biweekly salary at a rate equal to that specified for deputy clerk V.

(*l*) One deputy clerk-municipal court secretary who shall receive a biweekly salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

(m) One deputy clerk-administrative secretary IV, III, II, or I, as the case may be. A deputy clerk-administrative secretary IV shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of

San Diego. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(n) One deputy clerk-administrative services manager II or I, as the case may be. A deputy clerk-administrative services manager II shall receive a biweekly salary at a rate equal to that specified for administrative services manager II in the classified service of the County of San Diego. A deputy clerk-administrative services manager I shall receive a biweekly salary at a rate equal to that specified for administrative services manager I in the classified service of the County of San Diego.

(o) One deputy clerk-principal administrative analyst who shall receive a biweekly salary at a rate equal to that specified for the class of principal administrative analyst in the classified service of the County of San Diego.

(p) Four deputy clerk-principal systems analysts, senior systems analysts, associate systems analysts, assistant systems analysts, or systems analyst trainees, as the case may be. A deputy clerk-principal systems analyst shall receive a biweekly salary at a rate equal to that specified for principal systems analyst in the classified service of the County of San Diego. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(q) Three deputy clerk-LAN systems supervisors or deputy clerk-LAN systems analysts III, II, or I, as the case may be. A deputy clerk-LAN systems supervisor shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems supervisor in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst III shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst III in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst II shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst II in the classified service of the County of San

Diego. A deputy clerk-LAN systems analyst I shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst I in the classified service of the County of San Diego.

(r) Two deputy clerk-research attorneys IV, or III, as the case may be. A deputy clerk-research attorney IV shall receive a biweekly salary at a rate equal to that specified for deputy county counsel IV in the classified service of the County of San Diego. A deputy clerk-research attorney III shall receive a biweekly salary at a rate equal to that specified for deputy county counsel III in the classified service of the County of San Diego. Notwithstanding subdivision (b) of Section 74348, persons appointed to these positions on or after January 1, 1991, shall serve at the pleasure of the court administrator.

(s) Four deputy clerk-research attorneys II or I, as the case may be. A deputy clerk-research attorney II shall receive a biweekly salary at a rate equal to that specified for deputy county counsel II in the classified service of the County of San Diego. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. Notwithstanding subdivision (b) of Section 74348, persons appointed to these positions on or after January 1, 1990, shall serve at the pleasure of the court administrator.

(t) Two deputy clerk-legal assistants II or I, as the case may be. A deputy clerk-legal assistant II shall receive a biweekly salary at a rate equal to that specified for legal assistant II in the classified service of the County of San Diego. A deputy clerk-legal assistant I shall receive a biweekly salary at a rate equal to that specified for legal assistant I in the classified service of the County of San Diego.

(u) Notwithstanding subdivision (b) of Section 74348, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Section 74345 pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of these classes, the county personnel director shall conduct a classification review and make recommendations to the court administrator as to the establishment of these classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the designated range at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months in duration. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When an appointment is made, the class, compensation

(including salary and fringe benefits), and number of these positions may be established by joint action of a majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that a person serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire no later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of a majority of the judges and the board of supervisors.

(v) Notwithstanding subdivision (b) of Section 74348, up to 10 extra help deputy clerk-junior clerk positions (hourly rate) at the junior clerk-typist level, may be appointed by and serve at the pleasure of the court administrator. These appointments shall be temporary for a period not to exceed six months, plus one additional period not to exceed six months, at the court administrator's option.

(w) Notwithstanding subdivision (b) of Section 74348, up to 20 extra help positions (hourly rate) may be appointed by and serve at the pleasure of the court administrator in the class and at the salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period not to exceed six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(x) Notwithstanding subdivision (b) of Section 74348, the court administrator may appoint up to 30 temporary extra help deputy clerk-municipal court trainees V, III, II, or I who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee V shall receive an hourly salary at a rate equal to that specified for student worker V in the service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the service of the County of San Diego. A deputy clerk-municipal court trainee I shall receive a biweekly salary at a rate equal to that specified for student worker I in the service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court

trainee class, may remain in the class and be employed on a full-time basis for a period not to exceed six months from the first day of the month following their date of graduation.

(y) Twelve deputy clerk-administrative clerks III, II, or I, as the case may be. A deputy clerk-administrative clerk III shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. A deputy clerk administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy clerk administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(z) One deputy clerk-municipal court personnel officer or personnel officer II or I, as the case may be. A deputy clerk-municipal court personnel officer shall receive a biweekly salary at a rate equal to that specified for departmental personnel officer III in the classified service of the County of San Diego. A deputy clerk-personnel officer II shall receive a biweekly salary at a rate equal to that specified for departmental personnel officer II in the classified service of the County of San Diego. A deputy clerk-personnel officer I shall receive a biweekly salary at a rate equal to that specified for departmental personnel officer I in the classified service of the County of San Diego.

(aa) Nine deputy clerk-analysts III, II, I, or trainee, administrative assistant III, II, or I, as the case may be. A deputy clerk-analyst III shall receive a biweekly salary at a rate equal to that specified for analyst III in the classified service of the County of San Diego. A deputy clerk-analyst II shall receive a biweekly salary at a rate equal to that specified for analyst II in the classified service of the County of San Diego. A deputy clerk-analyst I shall receive a biweekly salary at a rate equal to that specified for analyst I in the classified service of the County of San Diego. A deputy clerk-analyst trainee shall receive a biweekly salary at a rate equal to that specified for analyst trainee in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for an analyst III in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for an analyst II in the classified service of the County of San Diego. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for an analyst I in the classified service of the County of San Diego.

(ab) Two deputy clerk-staff development coordinators or staff development specialists, as the case may be. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego.

(ac) One deputy clerk-court collection officer III who shall receive a biweekly salary at a rate equal to that specified for revenue and recover officer III in the classified service of the County of San Diego.

(ad) Five deputy clerk-court collection officers II or I, as the case may be. A deputy clerk-court collection officer II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego. A deputy clerk-court collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego.

(ae) Eight deputy clerk-court referral officers II or deputy clerk-court referral officers I, as the case may be. A deputy clerk-court referral officer II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of San Diego County. A deputy clerk-court referral officer I shall receive a biweekly salary at a rate 9 percent below that specified for the class of deputy probation officer in the classified service of San Diego County.

(af) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (c) to (w), inclusive, and (y) to (af), inclusive, and under Sections 74346 and 74352 may be increased by up to 136 additional positions by joint action of a majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to the positions shall be the same as those applicable to the class of those positions. The action of a majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective upon adoption of a resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution became effective, unless earlier ratified by the Legislature.

SEC. 70. Section 74604 of the Government Code is amended to read:

74604. There shall be one clerk of the court known as the court executive officer, who shall be appointed by the presiding judge with the concurrence of a majority of the judges of the court, and shall hold office at the pleasure of the majority of the judges of the court. The monthly compensation to be paid to the court executive officer shall be Range 3013, Step 5, of the San Luis Obispo County Salary Table. In addition to any other duties imposed on such officer by law, the court executive officer shall have the following duties:

(a) To direct and coordinate the nonjudicial activities of the court.

(b) To coordinate the personnel practices in compliance with rules of the court.

(c) To prepare and administer the budget of the court.

(d) To coordinate with other county agencies the acquisition, utilization, maintenance and disposition of county facilities, equipment and supplies necessary for operation of the court.

(e) To initiate studies and prepare appropriate recommendations and reports to the presiding judge relating to the business of the court, including, but not limited to, such matters as standardization of forms, procedures, and classification and compensation of officers and employees.

(f) To collect, compare, and analyze statistical data on a continuing basis concerning the status of judicial and nonjudicial business of the court and to prepare periodic reports and recommendations based on such data.

(g) To serve as liaison for the court with other persons, committees, boards, groups, and associations as directed by the presiding judge.

(h) To provide for and conduct a program of in-service training for the personnel of the municipal court.

SEC. 71. Section 74607 of the Government Code is amended to read:

74607. The presiding judge may make appointments to the following authorized positions:

Number	Classification	Salary Range
1	Assistant Court Executive Officer	2054
1	Calendar Coordinator	1273
2	Calendar Coordinator—1/2 time	1273
11	Municipal Court Clerk Trainee, or	0968
	Municipal Court Clerk I, or	1059
	Municipal Court Clerk II	1137
2	Municipal Court Clerk Trainee—1/2 time, or	0968
	Municipal Court Clerk I—1/2 time, or	1059
	Municipal Court Clerk II—1/2 time	1137
2	Municipal Court Account Technician	1102
3	Municipal Court Account Clerk	0863
1	Accountant I, or	1375
	Accountant II, or	1574
	Accountant III	1862
28	Municipal Court Legal Process Clerk, or	0808
	Municipal Court Legal Process Clerk I, or	0968
	Municipal Court Legal Process Clerk II, or	1059
	Municipal Court Legal Process Clerk III	1122

2	Municipal Court Legal Process Clerk III—1/2 time	1122
3	Supervising Municipal Court Clerk	1273
1	Supervising Municipal Court Legal Process Clerk	1245
1	Administrative Services Officer I, or	1375
	Administrative Services Officer II	1574
1	Court Data Manager	2211
1	Mail Clerk	0808

SEC. 72. Section 74610 of the Government Code is amended to read:

74610. (a) The positions enumerated in Sections 74604, 74607, and 74608 are deemed to be comparable in job and salary level to certain positions in the service of San Luis Obispo County. The following table sets forth the court classifications with the comparable county classifications shown opposite thereto:

Court Classification	County Classification
Court Executive Officer	Deputy County Counsel IV (Confidential)
Assistant Court Executive Officer	Administrative Analyst III
Calendar Coordinator—$^1/_2$ time	Supervising Superior Court Clerk
Calendar Coordinator	Supervising Superior Court Clerk
Municipal Court Clerk I, II	Superior Court Clerk I, II
Municipal Court Clerk Trainee	Legal Process Clerk I
Municipal Court Accounting Technician	Accounting Technician
Municipal Court Account Clerk	Account Clerk
Accountant I, II, III	Accountant I, II, III
Municipal Court Legal Process Clerk	Legal Process Clerk Trainee
Municipal Court Legal Process Clerk I, II, III	Legal Process Clerk I, II, III
Municipal Court Legal Process Clerk III—$^1/_2$ time	Legal Process Clerk III
Supervising Municipal Court Clerk	Supervising Superior Court Clerk

Supervising Municipal Court Legal Process Clerk	Supervising Legal Process Clerk
Administrative Services Officer I, II	Administrative Services Officer I, II
Court Data Manager	Programmer Analyst II plus 10 percent
Mail Clerk	Mail Clerk

In the event that the salary for any classification which is shown above is increased by the board of supervisors, a commensurate increase shall be made in the salary for the comparable court classification. Salary adjustments made pursuant to this section shall be effective the same date as the effective date of actions of the board of supervisors applicable to the respective and comparable county classifications, but shall remain effective only until January 1 of the second year following the year in which such an adjustment is made.

(b) Upon recommendation of the judges of the court, and with the approval of the board of supervisors, the court may appoint additional employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Any appointment made pursuant to this section shall be on an interim basis and shall expire January 1 of the second calendar year following the year in which the appointment is made unless ratified by the Legislature. This section shall not affect the application of Section 72150.

SEC. 73. Section 74642 of the Government Code is amended to read:

74642. Within the Santa Barbara Judicial District there shall be the following officers, attachés, and employees:

Santa Barbara Municipal Court		Salary Range
2	Account Clerk III-Ct.	400
1	Account Technician-Ct.	428
1	Accountant II-Ct.	488
1	Assistant Clerk-Admin. Officer (SB)	551
1	Clerk-Administrative Officer (SB)	601
2	Collections Rep.-Ct.	426
2	Commissioner, Municipal Court	3,206 BI-WKL
1	Court Clerk Chief-Ct.	502
2	Court Interpreter	439
1	Department Analyst-Ct.	505
1	Department DP Spec. Sr.-Ct.	507
1	Department DP Spec.-Ct.	484

1	EDP System & Prog. Analyst I-Ct. OR	524
	EDP System & Prog. Analyst II-Ct.	541
1	Exec. Secretary-Ct.	446
33	Judicial Asst. I-Ct. OR	390
	Judicial Asst. II-Ct.	415
2	Judicial Asst. I-Ct.D OR	390
	Judicial Asst. II-Ct.	415
12	Judicial Asst. III-Ct.	439
1	Judicial Asst. III-Ct.D	439
1	Judicial Asst. III-Ct.	439
1	Judicial Cal. Coord.-Ct.	482
5	Judicial Services Supv.-Ct.	458
1	Official Court Reporter-C	533
1	Official Court Reporter-E	533
1	Official Court Reporter-Municipal Court	533
4	Own Recognizance Officer	481
1	Own Recognizance Supervisor	501

SEC. 74. Section 74643 of the Government Code is amended to read:

74643. Within the Northern Santa Barbara Judicial District there shall be the following officers, attachés, and employees:

Santa Maria Municipal Court		Salary Range
1	Account Tech.—Ct.	428
1	Asst. Clerk—Administrative Officer—NCMC	541
2	Own Recognizance Officer	481
1	Own Recognizance Supervisor	501
1	Clerk–Administrative Officer—NCMC	601
1	Commissioner, Municipal Court	3,206/BI-WKLY
2	Court Interpreter	439
1	Department DP Specialist—Ct.	484
1	Executive Secretary—Ct.	446
13	Judicial Asst. I—Ct.	390
6	Judicial Asst. II—Ct.	415
5	Judicial Asst III—Ct.	439

3	Judicial Services Supv.—Ct.	458
1	Legal Research Asst.—D	608

SEC. 75. Section 74644.1 of the Government Code is amended to read:

74644.1. (a) There shall be one marshal, designated as the Marshal of Santa Barbara County, for the municipal courts established in Santa Barbara County. The marshal shall be deemed the head of the department denominated as the Santa Barbara County Marshal's Office. That department shall be responsible for all court services for the municipal courts, including bailiff duties in the courts, all service of process and other civil papers, and service of all criminal warrants issued by the municipal courts of Santa Barbara County. The jurisdiction of the marshal's office over criminal warrants shall be concurrent to the jurisdiction existing in the Santa Barbara County Sheriff's Department over these warrants.

The marshal shall serve at the pleasure of a combined majority of the Santa Barbara Municipal Court judges, and the Northern Santa Barbara Municipal Court judges, hereafter referred to as the judges of the Santa Barbara County courts. The marshal shall possess the rights, duties, and powers imposed upon marshals generally.

The salary range of the marshal shall be at level 560. The marshal shall receive the elected official management benefits for the balance of the term to which he or she was previously elected, after which the marshal shall receive management benefits set at the appropriate level for appointed department heads. Any salary adjustment for this position within that range shall be made by the Marshal's Oversight Committee.

(b) The marshal positions existing in the Santa Barbara, Santa Maria, and Lompoc municipal courts, and the constable position in the Solvang Justice Court, are abolished. In no event shall the marshal of the Santa Maria Municipal Court be employed at a lesser pay range or with fewer benefits than that to which he or she was entitled on the operative date of this section, for the term to which he or she was elected.

(c) Whenever a vacancy occurs in the position of Marshal of Santa Barbara County, the judges of the Santa Barbara County municipal courts, by a majority vote of their aggregate number, shall select and appoint the marshal under any organization, rules, and procedures they adopt or ratify. Discharge of the marshal shall be by majority vote of the judges of the municipal courts of Santa Barbara County. The judges of the Santa Barbara County municipal and justice courts may, by two-thirds vote, delegate any function under this section to the Marshal's Oversight Committee.

(d) The judges of the Santa Barbara County municipal courts shall create a Marshal's Oversight Committee consisting of three judges. The three judges shall be selected to sit on the committee on an annual basis. The committee shall consist of one judge from the South

County selected by the Santa Barbara Municipal Court judges, and one judge from the North County selected by the Santa Maria Municipal Court judges, the Lompoc Municipal Court judge, and the Solvang Justice Court judge. The third judge shall be appointed by the two selected judges and shall rotate between the North County and the South County courts. The Marshal's Oversight Committee may, by majority vote, make policies and adopt procedures pertaining to the operations and personnel administration of the marshal's department.

(e) There shall be two assistant marshals, one primarily assigned to the North County courts and one primarily assigned to the South County courts. Each assistant marshal shall be appointed by and serve at the pleasure of the marshal. This appointment shall require the concurrence of a majority of the members of the Marshal's Oversight Committee. Discharge of an assistant marshal shall be at the direction of the marshal and shall require the concurrence of a majority of the members of the Marshal's Oversight Committee.

(f) The salary range of an assistant marshal shall be at level 530. The salary of the assistant marshal may be adjusted annually, within its range, by the marshal with concurrence of the Marshal's Oversight Committee.

(g) A branch office of the Marshal of Santa Barbara County shall be maintained in each municipal court facility.

SEC. 76. Section 74644.5 of the Government Code is amended to read:

74644.5. On the operative date of this section, as provided in subdivision (a) of Section 74644.1, the positions prescribed in Sections 74642, 74643, and 74644 for the marshal's offices of the Santa Barbara Municipal Court, the Santa Maria Municipal Court, and the Lompoc Municipal Court shall be abolished, and within the municipal and justice court judicial districts, there shall be the following officers, attachés, and employees:

Number	Position	Salary Range
Marshal of Santa Barbara County		
2	Assistant Marshal	545
16	Deputy Marshal	492
5	Judicial Assistant I –Marshal	390
2	Judicial Assistant II –Marshal	415
2	Legal Services Specialist	415
4	Marshal's Sergeant	527
1	Clerk Principal –Ct.	446
1	Marshal	585

SEC. 77. Section 74647 of the Government Code is amended to read:

74647. (a) The judges of the Santa Barbara District may appoint two court commissioners. The judges of the Santa Maria Division of the Northern Santa Barbara Municipal Court may appoint one court commissioner.

(b) Commissioners shall be appointed by a majority of the judges of the court or courts, or by the senior judge of a two-judge court, to which the court commissioner is appointed. Commissioners shall serve at the pleasure of the majority of the judges in the court or courts or at the pleasure of the presiding judges in the court or courts or at the pleasure of the senior judge in a two-judge court and may be removed by a majority of the judges at their discretion. Within the jurisdiction of the court or courts and under the direction of the judges, commissioners shall exercise all the powers and perform all of the duties authorized by law to be performed by commissioners of superior courts and any additional powers and duties as may be prescribed by law. At the direction of the judges, commissioners may have the same jurisdiction and exercise the same powers and duties as the judges of the court with respect to any infraction or small claims action. The commissioners shall possess the same qualifications the law requires of a municipal court judge and shall not engage in the private practice of law. They shall be ex officio deputy clerks. Commissioners shall receive a salary equal to 85 percent of the salary paid to municipal court judges in Santa Barbara County.

(c) Full-time official reporters appointed by the majority of the judges of the municipal court pursuant to the provisions of Section 72194 and so designated, shall be attachés of the court and shall receive a biweekly salary in accordance with the provisions of Section 70059.7. That salary shall be paid at the same times and according to the same procedures as salaries of employees of the County of Santa Barbara. During the hours when the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

(d) The judges of the court may appoint as many part-time additional reporters as the business of the court requires. The additional reporters shall be known as official reporters pro tempore, and they shall serve without salary but shall receive, for reporting, fees at the per diem rate fixed by Section 70059.7. Rates of compensation of regular official reporters and official reporters pro tempore may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court, provided, however, that any changes in compensation which are made pursuant to this section shall be on an interim basis and shall remain in effect only until January 1, 1991, unless ratified by statute by the

Legislature prior to that date. In criminal cases such fees upon order of the court shall be a charge against the general fund of the county.

(e) An official reporter when not engaged in the performance of duties of the municipal court, may be appointed to serve as such reporter for the Santa Barbara County Grand Jury or in any other court in the County of Santa Barbara.

SEC. 78. Section 74663 of the Government Code is amended to read:

74663. In the Santa Clara County Judicial District there shall be one chief administrative officer/clerk who shall receive a salary of three thousand three hundred sixty dollars and sixty-four cents ($3,360.64) biweekly and shall, notwithstanding Section 74666, be appointed by and serve at the pleasure of a majority of the judges of the municipal court. In addition, there will be one legal aide (unclassified) and one staff attorney (unclassified) who shall serve one-year terms. The legal aide shall be appointed by and serve at the pleasure of a majority of the judges and shall receive a salary as specified in range 44.4B, and the staff attorney shall receive a salary as specified in range 38.4A. The Santa Clara County Salary Ordinances No. NS-5.94 and NS-20.94.9, as amended, for the fiscal year July 1, 1994, through June 30, 1995, are the sources for all salaries.

The clerk-administrative officer may appoint all of the following:

(1) One assistant chief administrative officer/clerk who shall receive a salary of two thousand six hundred fifty-eight dollars and forty-eight cents ($2,658.48), biweekly.

(2) One deputy administrator/court operations who shall receive a salary as specified in range 39.1A.

(3) One deputy administrator/court services who shall receive a salary as specified in range 39.1A.

(4) One administrative services manager II who shall receive a salary as specified in range 40.5A.

(5) One departmental systems specialist II who shall receive a salary as specified in range 40.3A, or one departmental systems specialist I who shall receive a salary as specified in range 38.3A.

(6) One municipal court department information systems specialist who shall receive a salary as specified in range 23.4Y.

(7) Two management analysts who shall receive a salary as specified in range 36.0A, or associate management analyst B who shall receive a salary as specified in range 32.3A, or associate management analyst A who shall receive a salary as specified in range 29.0A.

(8) Two accountants III who shall receive a salary as specified in range 35.8A, or accountants II who shall receive a salary as specified in range 46.7B, or accountant/auditor appraiser who shall receive a salary as specified in range 43.7B.

(9) One accountant II who shall receive a salary as specified in range 46.7B, or accountant/auditor appraiser who shall receive a salary as specified in range 43.7B.

(10) One administrative support officer I who shall receive a salary as specified in range 32.8A.

(11) Two secretaries III who shall receive a salary as specified in range 43.4B, or secretaries II who shall receive a salary as specified in range 41.4B, or secretaries I who shall receive a salary as specified in range 39.0B.

(12) Two secretaries II who shall receive a salary as specified in range 41.4B, or secretaries I who shall receive a salary as specified in range 39.0B.

(13) One account clerk II who shall receive a salary as specified in range 38.4B.

(14) One municipal court division manager III who shall receive a salary of two thousand three hundred eighteen dollars and eighty cents ($2,318.80) biweekly.

(15) Two municipal court division managers II who shall receive a salary of two thousand one hundred thirty-five dollars and twenty cents ($2,135.20) biweekly.

(16) Three municipal court division managers I who shall receive a salary of two thousand three dollars and forty-four cents ($2,003.44) biweekly.

(17) Three and one-half chief deputy court clerks I who shall receive a salary as specified in range 34.9A.

(18) Twelve supervising deputy court clerks II who shall receive a salary as specified in range 32.9A.

(19) Five supervising deputy court clerks I who shall receive a salary as specified in range 30.4A.

(20) Ten assistant supervising deputy court clerks who shall receive a salary as specified in range 28.4A.

(21) Sixty-two municipal courtroom clerks who shall receive a salary as specified in range 44.4B.

(22) Two hundred four and one-half deputy court clerks II who shall receive a salary as specified in range 40.4B or deputy court clerks I who shall receive a salary as specified in range 35.9B.

(23) Two court services coordinators who shall receive a salary as specified in range 32.0A.

(24) Seven accountant assistants who shall receive a salary as specified in range 40.4B.

(25) One security guard who shall receive a salary as specified in range 38.7B.

(26) One stock clerk who shall receive a salary as specified in range 36.5B.

(27) One messenger-driver who shall receive a salary as specified in range 36.3B.

(28) Two deputy court clerks I (unclassified) who shall receive a salary as specified in range 35.9B.

(29) Thirty-four municipal court reporters (unclassified) who shall receive a salary as specified in range 51.5K.

SEC. 79. Section 74665 of the Government Code is amended to read:

74665. In the Santa Clara County Judicial District the judges of these courts, pursuant to Section 72194, may appoint as many additional reporters as the business of the courts may require, who shall be known as official reporters pro tempore, and who shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in those sections for reporting testimony and proceedings, the official reporters pro tempore shall in all cases receive one hundred six dollars and fourteen cents ($106.14) per half day and two hundred twelve dollars and twenty-eight cents ($212.28) per day, which shall, upon order of the court, be a charge against the general fund of the county. If the board of supervisors increases the per diem fees for official court reporters pro tempore in the superior court pursuant to Section 70046.1, this increase shall apply equally for all official reporters pro tempore in the municipal courts, but all of these increases shall be effective only until the second year following the calendar year in which the adjustment is made.

SEC. 80. Section 74745 of the Government Code is amended to read:

74745. The court administrator may appoint with the approval of the judges:

(a) Three deputy court administrators. Persons appointed to this position on or after January 1, 1993, shall serve at the pleasure of the court administrator. The deputy court administrators shall receive a salary within the biweekly rate range ES-6 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator." Notwithstanding subdivision (b) of Section 74749, persons who hold the position of deputy clerk-administrative services manager III, deputy clerk division manager III and II on January 1, 1993, may be appointed by the court administrator to the position of deputy clerk-deputy court administrator without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(b) One deputy clerk-administrative assistant trainee, I, II, or III as the case may be. A deputy clerk-administrative assistant trainee shall receive a biweekly salary at a rate equal to that specified for administrative trainee in the classified service of the County of San Diego. A deputy clerk-administrative assistant I shall receive a

biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego.

(c) One deputy clerk-division manager I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V in the San Diego Judicial District.

(d) Seven deputy clerks V each of whom shall receive a biweekly salary equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities.

(e) One deputy clerk-assistant, associate, or senior accountant, as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego.

(f) One deputy clerk-staff development specialist or a deputy clerk-staff development coordinator, as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(g) One deputy clerk-volunteer program coordinator. A deputy clerk-volunteer program coordinator shall receive a biweekly salary at a rate equal to the greater of that specified for volunteer program coordinator in the superior court service of the County of San Diego or 15.75 percent higher than that specified for deputy clerk III.

(h) Ten deputy clerks IV. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III.

(i) Sixty-three deputy clerks III, II, or I, or deputy clerk-intermediate clerk typists, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that

specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I classification may be at any step within the salary range. Up to three of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of four deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(j) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(k) Four deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk-interpreter in the superior court service of the County of San Diego.

(*l*) Notwithstanding subdivision (b) of Section 74749, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 74740 to 74750, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the range proposed

for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the classified service of the County of San Diego to which the pending class shall be tied for benefit purposes. When that appointment is made, the class, compensation (including salary and fringe benefits), and number of those positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to the classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(m) Notwithstanding subdivision (b) of Section 74749, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(n) Notwithstanding subdivision (c) of Section 74749, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, III, or V, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San

Diego. A deputy clerk-municipal court trainee V shall receive a biweekly salary at a rate equal to that specified for student worker V in the classified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(o) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 74744.

(p) Three deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(q) One deputy clerk-municipal court secretary, who shall receive a salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

(r) One deputy clerk-senior systems analyst, associate systems analyst, assistant systems analyst, or systems analyst trainee, or systems support analyst II, I, or trainee as the case may be. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego. A deputy clerk-systems support analyst II shall receive a biweekly salary at a rate equal to that specified for systems support analyst II in the classified service of the County of San Diego. A deputy clerk-systems support analyst I shall receive a biweekly salary at a rate equal to that specified for systems support analyst I in the classified service of the County of San Diego. A deputy clerk-systems support analyst trainee shall receive a salary equal to that specified for systems support analyst trainee in the classified service of the County of San Diego.

(s) One deputy clerk-municipal court computer specialist I, II, or III, as the case may be. A deputy clerk-municipal court computer

specialist I, II, or III shall receive a biweekly salary at a rate equal to that specified for departmental computer specialist I, II, III, respectively, in the classified service of the County of San Diego.

(t) Three deputy clerk-collection officers I, II, or III, as the case may be. A deputy clerk-collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego. A deputy clerk-collection officer II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego. A deputy clerk-collection officer III shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer III in the classified service of the County of San Diego.

(u) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (a) to (k), inclusive, (m), and (o) to (t), inclusive, and under Section 74743 may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointments of persons to those positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on the adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

SEC. 81. Section 74783 of the Government Code is amended to read:

74783. There shall be one clerk-administrator who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The clerk-administrator and all other court employees shall receive the salary specified in the salary resolution for Stanislaus County which is in effect. The clerk may appoint, with the approval of the judges of the court, all of the following:

(a) One assistant clerk-administrator.
(b) Ten courtroom clerks.
(c) Four supervising legal clerks II.
(d) One accountant I.
(e) Nine legal clerks III.
(f) One account clerk III.
(g) One supervising judicial secretary.
(h) Thirty-three legal clerks I/II.
(i) One supervising courtroom clerk.
(j) Four supervising legal clerks I.
(k) One staff services coordinator.

(*l*) Four interpreters.
(m) One master calendar clerk.

SEC. 82. Section 74803 of the Government Code is amended to read:

74803. The clerk may appoint:
(a) One courtroom calendar coordinator.
(b) Nine municipal courtroom clerks.
(c) Three deputy clerks III.
(d) Two judicial secretaries.
(e) Six deputy clerks II.
(f) Thirty-nine deputy clerks I.
(g) One director of court operations.
(h) One administrative assistant I.
(i) One assistant clerk-administrator.
(j) Two court reporters.
(k) One office systems analyst.

SEC. 83. Section 74805 of the Government Code is amended to read:

74805. The marshal may appoint:
(a) Five marshal sergeants.
(b) Twenty-one deputy marshals.
(c) Three specialist clerks.
(d) One clerk typist II.

SEC. 84. Section 74807 of the Government Code is amended to read:

74807. Persons employed in any of the positions authorized by this article shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule contained in Section 74806, except that if the range shown opposite the title of the position includes a fraction then the person employed in such position shall be paid a salary equal to that shown opposite said fractional range in the salary ordinance of the County of San Joaquin:

	Position	Range
(a)	Deputy clerk I	50.00
(b)	Deputy clerk II	52.00
(c)	Deputy clerk III	53.50
(d)	Judicial secretary	54.20
(e)	Municipal courtroom clerk	56.50
(f)	Clerk/Administrator	70.30
(g)	Deputy marshal	60.20
(h)	Marshal sergeant	62.50
(i)	Courtroom calendar coordinator	58.50
(j)	Director of court operations	58.50
(k)	Administrative assistant I	59.20
(*l*)	Assistant clerk administrator	60.90

(m) Specialist clerk	51.00
(n) Court reporter	63.70
(o) Office systems analyst	58.50
(p) Clerk typist II	50.00

Subject to the provisions of the salary ordinance of the County of San Joaquin, each person employed in the clerk's office or the marshal's office may receive an annual increase in salary of one step on his or her assigned range until the employee reaches the maximum step on the range assigned for his or her position. Thereafter no additional step increase shall be granted.

SEC. 85. Section 74808 of the Government Code is amended to read:

74808. Whenever the salary of a related class or classes of San Joaquin County employees is adjusted, the salary of the following classes may be adjusted by a percentage not to exceed the percentage of adjustment granted to the class or classes deemed by the board of supervisors to be related:

(a) Deputy clerk I.
(b) Deputy clerk II.
(c) Deputy clerk III.
(d) Judicial secretary.
(e) Municipal courtroom clerks.
(f) Clerk/Administrator.
(g) Courtroom calendar coordinator.
(h) Deputy marshal.
(i) Marshal sergeant.
(j) Director of court operations.
(k) Administrative assistant I.
(*l*) Assistant clerk administrator.
(m) Specialist clerk.
(n) Court reporter.
(o) Office systems analyst.
(p) Clerk typist II.

All adjustments to the salaries of the above-named classes shall be effective as of the same date as the adjustment for the class, or classes, deemed to be related, and shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless earlier ratified by the Legislature.

SEC. 86. Section 74809 of the Government Code is amended to read:

74809. Notwithstanding any other provisions of law, the provisions of the county ordinance relating to civil service and the rules of the civil service commission adopted pursuant thereto, shall apply to all employees in the same manner and to the same extent as applicable generally to officers and employees of the County of San Joaquin.

Such employees shall be entitled to the same vacation, sick leave, leave of absence, and similar benefits, including uniform allowances for the deputy marshals and clerical employees who regularly perform matron duties in the marshal's office, and may be appointed, promoted, demoted, terminated or transferred, or their status otherwise adjusted in the same manner and with the same effect as is or may be provided by the current salary ordinance of San Joaquin County, or the civil service ordinance of the county, for employees of the county.

SEC. 87. Section 74809.5 of the Government Code is repealed.

SEC. 88. Section 74811 is added to the Government Code, to read:

74811. Whenever any person occupying the position of specialist clerk or clerk typist II in the office of the marshal performs the duties of a matron in that office, her salary shall be increased by a sum equivalent to $2^1/_2$ percent of the salary otherwise payable during the period of the performance of such duties.

SEC. 89. Section 74921.7 of the Government Code is amended to read:

74921.7. There shall be one clerk of the district, to be known as the municipal court administrator, who shall be appointed by and serve at the pleasure of a majority vote of the judges. The municipal court administrator shall receive a biweekly salary range of 242 in the Tulare County Salary Resolution. The municipal court administrator shall receive an additional lump sum, equivalent to 5 percent of his or her then current annual salary, on the first pay period of August, as incentive pay, provided that one million dollars ($1,000,000), or more, has been collected by the collections unit of the municipal courts in the immediately preceding fiscal year. He or she shall be the appointing power for those positions listed in Section 74921.10 as being appointed by the municipal court administrator.

SEC. 90. Section 74921.10 of the Government Code is amended to read:

74921.10. The number of positions within each job classification which may be filled by appointment by the municipal court administrator and the marshal are, as follows:

(a) Appointed by the municipal court administrator:

Number	Title	Range
1	Micro-Computer Network Administrator	209
3	Deputy Clerk/Administrator II	191
5	Deputy Clerk/Administrator I	176
1	Collections Supervisor	169
1	Legal Secretary I	164
3	Collector I	159
20	Courtroom Clerk	162

14	Court Clerk II	156
29	Legal Office Assistant II	136
5	Account Clerk	132
2	Office Assistant II	126

(b) Appointed by the marshal, except as provided in Section 74922.5:

Number	Title	Range
1	Chief Marshal's Assistant	220
3	Marshal's Assistant	209
14	Deputy Marshal	178
1	Legal Office Assistant III	146
4	Legal Office Assistant II	136

The marshal shall be management class A-4 and entitled to the benefits in that class as an appointed department head. The chief marshal's assistant and the three marshal's assistants shall be the equivalent of the current management class B and entitled to the general benefits in that class as management personnel.

(c) The marshal may also appoint as many deputy marshal keepers as may be required by law. The deputy marshal keepers shall be compensated at the fee allowed by law for keeping property.

SEC. 91. Section 74925.2 of the Government Code is amended to read:

74925.2. (a) Notwithstanding Section 72194, each judge of the district may appoint a competent phonographic reporter, to be known as a regular official reporter of the court, and as many pro tempore reporters as are necessary to report the proceedings of the court. Regular official reporters shall hold office during the pleasure of the appointing judge. The duties of regular official reporters appointed pursuant to this section shall be performed as elsewhere provided by law.

(b) The fee for official court reporters for reporting proceedings shall be one hundred fifty dollars ($150) per day. All other fees of these reporters shall be as elsewhere provided by law. Where it is necessary to appoint a pro tempore reporter, the pro tempore reporter shall receive the same per diem fee paid regular official reporters of the municipal courts for the days the pro tempore reporter actually is on duty under order of the court. Regular official reporters and pro tempore reporters shall not receive more than one per diem fee per day from the county. Rates of compensation of all regular official reporters and official reporters pro tempore may be adjusted by the board of supervisors. Adjustments in compensation made pursuant to this subdivision shall be effective only until January

1 of the second year following the year in which the adjustments are made, unless ratified by the Legislature.

(c) Regular official reporters may, at the election of each regular official reporter, be members of any retirement system maintained by the county. For retirement credit purposes, compensation earnable shall be deemed to be the annual total of all per diem and transcription fees paid by the county to each regular official reporter up to a maximum of thirty thousand dollars ($30,000) per year. Each new regular official reporter shall make an election within 60 days of his or her appointment as a regular official reporter. The election shall be an irrevocable decision not subject to later withdrawal, change, or modification.

SEC. 92. Section 74954 of the Government Code is amended to read:

74954. (a) Whenever a reference is made to a numbered salary range according to the standard salary schedule in any section of this article, the schedule found in the Napa County Table and Index of Classes in effect on July 2, 1994, shall apply through June 30, 1995, and the schedule found in the table and index of classes in effect on July 1, 1995, shall apply thereafter, except as provided otherwise in subdivision (b).

(b) In the event the Board of Supervisors of the County of Napa amends the resolution establishing salary ranges and monthly salary rates on the standard salary schedule for the County of Napa, effective on the date of this act, or adopts a new resolution which provides for a change in compensation for ranges or steps, such changes shall be effective for the municipal court employees under this article on the effective date of the action of the board of supervisors and shall remain effective only until January 1 of the second year following the year in which such change is made.

SEC. 93. Section 74954.5 of the Government Code is amended to read:

74954.5. (a) Whenever a reference is made to a numbered salary range according to the management and nonclassified personnel salary schedule in any section of this article, the schedule found in the Napa County Table and Index of Classes in effect on July 2, 1994, shall apply through June 30, 1995, and the schedule found in the table and index of classes in effect on June 1, 1995, shall apply thereafter, except as provided otherwise in subdivision (b).

(b) In the event the Board of Supervisors of the County of Napa amends the resolution establishing salary ranges and monthly salary rates for the management and nonclassified personnel of the County of Napa, or adopts a new resolution which provides for a change in compensation for ranges or steps, such changes shall be effective for the municipal court management and nonclassified personnel under this article on the effective date of the action of the board of supervisors and shall remain effective only until January 1 of the second year following the year in which such change is made.

SEC. 94. Section 74955 of the Government Code is amended to read:

74955. There shall be one court executive officer (clerk of the court) who shall be appointed by, and who shall serve at the pleasure of, a majority of the judges of the municipal court. The court clerk shall be paid a biweekly salary at the rate specified in salary range 52507E in the salary schedule for management and nonclassified personnel. In addition to any other duties imposed by law, the court clerk shall, at the direction of the presiding judge, perform any or all of the following duties:

(a) To direct and coordinate the nonjudicial activities of the court.

(b) To prepare and administer the budget of the court.

(c) To coordinate with other appropriate county agencies the acquisition, utilization, maintenance, and disposition of county facilities, equipment, and supplies necessary for the operation of the court.

(d) To collect, compare, and analyze statistical data on a continuing basis concerning the status of judicial and nonjudicial business of the court and to prepare periodic reports and recommendations based on such data.

(e) To serve as liaison for the court with other persons, committees, boards, groups, and associations as directed by the presiding judge.

SEC. 95. Section 74956 of the Government Code is amended to read:

74956. (a) There shall also be the following court employee positions, whose numbers and salary range on the standard salary schedule of the County of Napa shall be as specified:

Position Title	Number of Positions	Salary Range
Court executive officer (court clerk)	1	52507E
Assistant court executive officer	1	03706E
Branch manager	1	43206E
Court division supervisor	1	54902D
Court division supervisor	1	54902E
Municipal court clerk	4	17501E
Legal clerk II	8	15001E
Legal clerk II	1	01372A
Legal clerk interpreter—A	1	50801E
Legal clerk I	3	14901E
Senior account clerk	1	00301B
Account clerk I	1	00101C
Office assistant II	1	27201A
Office assistant II	1	27201B
Office assistant II	1	27201C
Data control clerk	1	26801E
Court computer systems coordinator	1	55501A
Court commissioner	1	*

* As specified in Section 74949.1

(b) Each such person employed on the effective date of this article in the office of the clerk of the municipal court shall receive credit for prior continuous service in the office, including service in a court superseded upon establishment of the municipal court.

(c) With the approval of the board of supervisors, a majority of the municipal court judges may establish additional positions for officers, attachés, and employees in addition to those provided by subdivision (a). The order and approval establishing any such position shall designate the position title and salary range. Such appointments shall be on an interim basis and shall expire January 1 of the second year following the calendar year in which such appointments are made unless ratified by the Legislature.

SEC. 96. Section 74984 of the Government Code is amended to read:

74984. (a) There shall be one marshal who shall be appointed by the superior and municipal courts; provided, that upon the effective date of this section, the incumbent elected marshal shall continue in office as marshal and may be removed by the court only for cause.

When that marshal leaves office, the succeeding marshals shall be appointed by and serve at the pleasure of the court.

(b) The marshal shall receive the salary of four thousand one hundred forty-nine dollars ($4,149) per month as set forth in the standard salary resolution of Shasta County in effect for the 1995–96 fiscal year. The marshal shall be provided the same employment benefits by Shasta County as the county provides to other county employees in an equivalent category in the county's merit personnel system.

(c) The board of supervisors may transfer certain duties of the sheriff to the marshal pursuant to Section 26608.3.

(d) All fees collected by the marshal's office shall be deposited with the county treasurer and credited to the general fund.

SEC. 97. Section 74985 of the Government Code is amended to read:

74985. (a) The marshal, with the approval of the court, may appoint the following marshal's office employees whose numbers, classifications, and salary ranges in the standard salary resolution of Shasta County in effect on January 1, 1994, are:

Position Title	Number of Positions		Salary Range
Marshal	1	Flat	$4,149 per mo.
Deputy Marshal	15	39.3	$2,343-2,848 per mo.
Deputy Marshal (Probationary)		Flat	$2,232 per mo.
Deputy Marshal Trainee		Flat	$2,125 per mo.
Legal Process Clerk II	4	31.3	$1,586-1,928 per mo.
Legal Process Clerk I		29.3	$1,438-1,748 per mo.
Marshal's Civil Supervisor	1	34.3	$1,836-2,232 per mo.
Marshal's Sergeant	2	41.8	$2,647-3,218 per mo.

(b) Each employee of the marshal's office shall be provided the same employment benefits by Shasta County as the county provides to other county employees in equivalent categories and salary ranges in the county's merit personnel system.

SEC. 98. Section 74986 of the Government Code is amended to read:

74986. (a) The municipal and superior courts may appoint a court executive officer who shall be the chief administrative officer and ex officio clerk of the court. The court executive officer shall serve at the pleasure of the court and shall receive a salary of five thousand one hundred thirteen dollars ($5,113) per month as set

forth in the standard salary resolution of Shasta County in effect for the 1995–96 fiscal year. The court executive officer shall be provided the same employment benefits by Shasta County as the county provides to other county employees in an equivalent category in the county's merit personnel system.

(b) The judges of the superior and municipal courts shall prescribe and regulate the duties and authority of the court executive officer.

SEC. 99. Section 74987 of the Government Code is amended to read:

74987. (a) The court executive officer, with the approval of the court, may appoint the court's support staff personnel. The following employees of the court shall be compensated within the following applicable ranges established by the standard salary resolution of Shasta County in effect on January 1, 1995:

Position Title	Number of Positions	Salary Range	
Court Executive Officer	1	Flat	$5,113 per mo.
Asst. Ct. Executive Officer	1	Flat	$4,090 per mo.
Court Commissioner	1	Flat	$6,129 per mo.
Court Services Manager	1		$2,460–2,991 per mo.
Court Services Asst.IV	1		$1,863–2,265 per mo.
Court Services Asst.III	5		$1,774-2,157 per mo.
Court Services Asst.I/II	22		$1,533-2,054 per mo.
Judicial Secretary	1		$1,928-2,343 per mo.
Court Serv. Asst./Cal. Coord.	1		$2,054-2,497 per mo.
Court Serv. Financial Hearing Officer	1		$2,054-2,497 per mo.
Court Serv. Acct./Coll. Clerk I/II/III	5		$1,586-2,157 per mo.
Court Serv. Supervisor	2		$2,004-2,436 per mo.
Court Serv. Fiscal Officer	1		$2,713-3,297 per mo.

(b) Each employee designated in subdivision (a) shall be provided the same employment benefits by Shasta County as the county provides to other county employees in equivalent categories and salary ranges in the county's merit personnel system.

SEC. 100. Sections 73, 74, 75, 76, and 77 of this act shall become operative only if SB 1102 is enacted and becomes operative.

SEC. 101. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 893

An act to amend Section 11040 of the Government Code, and to amend Sections 1036 and 1064.2 of the Insurance Code, relating to the Attorney General.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 11040 of the Government Code is amended to read:

11040. (a) This article does not affect the right of any state agency or employee to employ counsel in any matter of the state, after first having obtained the written consent of the Attorney General.

(b) It is the intent of the Legislature that overall efficiency and economy in state government be enhanced by employment of the Attorney General as counsel for the representation of state agencies and employees in judicial and other proceedings.

The Legislature finds that it is in the best interests of the people of the State of California that the Attorney General be provided with the resources needed to develop and maintain the Attorney General's capability to provide competent legal representation of state agencies and employees in any judicial proceeding.

(c) Except with respect to employment by the state officers and agencies specified by title or name in Section 11041 or when specifically waived by statute other than Section 11041, the written

consent of the Attorney General is required prior to employment of counsel for representation of any state agency or employee in any judicial proceeding.

SEC. 2. Section 1036 of the Insurance Code is amended to read:

1036. Notwithstanding any other provision of law, the provisions of Article 4 (commencing with Section 11040) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, pertaining to legal services, shall apply in the institution and prosecution of all insurance delinquency proceedings under this code. The compensation of any counsel outside of California state service who is employed pursuant to these provisions to represent the commissioner as receiver shall be fixed by the commissioner, subject to the approval of the court. Compensation of counsel representing the commissioner as receiver shall be paid from the assets of the person against whom the commissioner has proceeded under this article. It is the intent of the Legislature and the Legislature finds it is in the best interest of the people of the State of California that the Attorney General and the Insurance Commissioner consult and cooperate in regard to utilizing agency counsel of the Department of Insurance as the commissioner's legal counsel in delinquency proceedings, judicial and otherwise, to the extent appropriate and consistent with the interests of the parties beneficially interested in those proceedings and if that use would result in the savings of costs to the parties beneficially interested in those proceedings.

SEC. 3. Section 1064.2 of the Insurance Code is amended to read:

1064.2. (a) Whenever under the laws of this state a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the commissioner as receiver. Upon the appointment, the court shall direct the receiver forthwith to take possession of the assets of the insurer and to administer them under the orders of the court.

(b) The domiciliary receiver and his or her successors in office shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of the order of his or her appointment, and he or she shall have the right to recover the same and reduce them to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in this article for ancillary receivers appointed in this state as to assets located in this state. The filing or recording of the order appointing the receiver or certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded. The domiciliary receiver shall be responsible on his or her official bond for the proper administration of all assets coming into his or her possession or control.

(c) Upon taking possession of the assets of a delinquent insurer the domiciliary receiver shall, subject to the direction of the court, and in accordance with those procedures that the receiver may petition the court to establish, immediately proceed to conduct the business of the insurer or to take the steps authorized by the laws of this state for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer. In connection with delinquency proceedings, he or she may appoint one or more special deputy commissioners to act for him or her, and may employ clerks and assistants as he or she deems necessary. The compensation of the special deputies, clerks, or assistants and all expenses of taking possession of the delinquent insurer and of conducting the delinquency proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them, special deputies shall possess all the powers given to them, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to delinquency proceedings.

CHAPTER 894

An act to amend Sections 73391.5, 73393, 73399.3, and 74641 of, to add Sections 73395.1, 74640.1, 74640.2, 74641.2, and 74641.3 to, to repeal and add Section 74640 of, and to repeal, add, and repeal Section 73395 of, the Government Code, relating to courts.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 73391.5 of the Government Code is amended to read:

73391.5. The board of supervisors may, at any time, consolidate the Avenal Municipal Court with the Kings County Municipal Court District. On the effective date of the consolidation and thereafter, the Kings County Municipal Court District will consist of the Avenal, Corcoran, Hanford, and Lemoore Divisions, and all provisions of this article shall apply to the Kings County Municipal Court District as so formed.

SEC. 2. Section 73393 of the Government Code is amended to read:

73393. On the operative date of this article, the Municipal Court Judge of the Hanford Municipal Court District and the Justice Court Judges of the Corcoran and Lemoore Judicial Districts shall assume the positions of Municipal Court Judges of the Hanford, Corcoran, and Lemoore Divisions, respectively. On the operative date of the

consolidation of the Avenal Municipal Court within the Kings County Municipal Court District, the Municipal Court Judge of the Avenal Municipal Court shall assume the position of Municipal Court Judge of the Avenal Division of the Kings County Municipal Court District. Judges shall be elected for six-year terms beginning in 2000.

SEC. 3. Section 73395 of the Government Code is repealed.

SEC. 3.2. Section 73395 is added to the Government Code, to read:

73395. The judges of the Kings County Municipal Court District shall annually by election select from their membership a presiding judge. In the event that there is a tie vote in such an election, and the current presiding judge is a candidate who received sufficient votes to result in a tie vote with another candidate, another vote or votes shall be taken. In the event of such a tie vote, the current presiding judge shall be ineligible to succeed himself or herself.

This section shall remain in effect only until December 31, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before December 31, 2000, deletes or extends that date.

SEC. 3.4. Section 73395.1 is added to the Government Code, to read:

73395.1. The judges of the Kings County Municipal Court District shall formulate rules and regulations not inconsistent with the law or rules and standards adopted and prescribed by the Judicial Council for transfer of cases, assignment of judges, scheduling of vacation of judges, and other administrative matters such as will promote uniformity of procedures and efficiency and economy in the business of the district. Those rules and regulations shall be administered by the court executive officer under the supervision and control of the presiding judge of the district. Any rules and regulations adopted pursuant to Section 72002.1 shall be adopted by a majority vote of the judges of the district.

SEC. 3.6. Section 73399.3 of the Government Code is amended to read:

73399.3. Notwithstanding any other provision of law, effective July 1, 1996, the position of the Constable of the Avenal Justice Court is abolished. The Legislature also finds and declares that, notwithstanding the provisions of Section 71085, the position of elected marshal of the Avenal Municipal Court was not created upon the adoption of Senate Constitutional Amendment 7 in 1994. The Kings County Sheriff shall serve as the ex officio marshal of the Avenal Municipal Court until such time as the board of supervisors consolidates the Avenal Municipal Court with the Kings County Municipal Court District, at which time the sheriff shall serve in the Avenal Division as set forth in Section 73399.2.

SEC. 4. Section 74640 of the Government Code is repealed.

SEC. 5. Section 74640 is added to the Government Code, to read:

74640. There are in the County of Santa Barbara two municipal court districts, known as the Santa Barbara Municipal Court and the North Santa Barbara Municipal Court.

SEC. 6. Section 74640.1 is added to the Government Code, to read:

74640.1. The North Santa Barbara Municipal Court is comprised of three divisions, embracing that territory in the county which was specified to be within the Santa Maria Municipal Court District, the Lompoc Municipal Court District, and the Solvang Justice Court District as they existed on December 31, 1994; and with such modifications to division boundaries as may thereafter be made by the board of supervisors, after public hearing, or by operation of law.

SEC. 7. Section 74640.2 is added to the Government Code, to read:

74640.2. In order that the citizens residing in each division of the North Santa Barbara Municipal Court may have convenient access to the court, sufficient court facilities, including staff and other necessary personnel, shall be maintained in each division at the following sites or as otherwise designated by the board of supervisors:

(a) In the Santa Maria Division, in the City of Santa Maria.

(b) In the Lompoc Division, in the City of Lompoc.

(c) In the Solvang Division, in the City of Solvang.

SEC. 8. Section 74641 of the Government Code is amended to read:

74641. Each of the municipal court districts in the County of Santa Barbara shall have the following number of judges and commissioners:

(a) Santa Barbara	4 judges and two commissioners
(b) Northern Santa Barbara:	
(1) Santa Maria Division	2 judges and 1 commissioner
(2) Lompoc Division	1 judge
(3) Solvang Division	1 judge

SEC. 9. Section 74641.2 is added to the Government Code, to read:

74641.2. (a) In the North Santa Barbara Judicial District, judges shall be eligible for offices in the district as follows:

(1) In the Santa Maria Division, the two judges of the Santa Maria Judicial District shall automatically become the two judges of the Santa Maria Division.

(2) In the Lompoc Division, the judge of the Lompoc Judicial District shall automatically become the judge of the Lompoc Division.

(3) In the Solvang Division, the judge of the Solvang Judicial District shall automatically become the judge of the Solvang Division.

(b) The time for election and qualification of the successor to any judge who becomes the judge of a division pursuant to this section shall be that previously fixed by law for the election and qualification of the successors for the court and office superseded, had those courts not been superseded. The judge of each division shall be elected by the electors resident within that division, and not from the North Santa Barbara Judicial District at large. However, any otherwise qualified candidate is eligible to be elected to any division if he or she resides within the boundaries of the district as a whole.

SEC. 10. Section 74641.3 is added to the Government Code, to read:

74641.3. Trial jurors for each session of the courts of the district shall be selected from persons residing within the divisions in which the sessions are held. Upon adoption of a rule pertaining thereto by the judges, any division may use the same jury panel as that summoned for service in the North County Division of the Superior Court. When selected from the superior court panel, persons selected for jury duty in a municipal court division need not be residents of that division. Nothing in this article shall be interpreted to in any way limit the authority of the court to adopt local rules for purposes of selecting trial jurors pursuant to Section 203 of the Code of Civil Procedure.

SEC. 11. Sections 1, 2, and 3.6 of this act shall become operative on January 1, 1996.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 895

An act to add Chapters 2.92 (commencing with Section 7286.50) and 2.94 (commencing with Section 7286.55) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Chapter 2.92 (commencing with Section 7286.50) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.92. FORT BRAGG BRAGG TRANSACTIONS AND USE TAX

7286.50. (a) Subject to subdivision (b), the City of Fort Bragg may levy a transactions and use tax at a rate of 0.25 or 0.5 percent, if an ordinance or resolution proposing that tax is approved by a majority vote of all the members of the city council and the tax is approved by a two-thirds vote of the qualified voters of the city voting in an election on the issue.

(b) (1) Any transactions and use tax levied under this section shall be levied pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(2) The net revenues derived from a tax levied under this section shall be expended only for the repair, replacement, construction, or reconstruction of the city's streets and roads system.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed. In addition, any tax imposed pursuant to this section shall cease to be operative on that date. However, any net revenues derived from that tax that remain unexpended as of that date shall be expended in accordance with paragraph (2) of subdivision (b) until those net revenues are exhausted.

SEC. 2. Chapter 2.94 (commencing with Section 7286.55) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.94. SAN JOAQUIN COUNTY TRANSACTIONS AND USE TAX

7286.55. (a) In addition to the tax levied pursuant to Part 1.5 (commencing with Section 7200), and any other tax authorized by this part, the Board of Supervisors of the County of San Joaquin may impose a transactions and use tax by adoption of an ordinance in accordance with this part if each of the following conditions are met:

(1) The ordinance imposing the tax is submitted to and approved by the voters of the county in accordance with Article 3.7 (commencing with Section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(2) The tax is imposed at a rate of .125 percent for a period not to exceed 10 years.

(3) The revenues collected from the tax are used only for funding countywide library programs and operations.

(b) The Board of Supervisors of the County of San Joaquin may impose a transactions and use tax in any succeeding period not to

exceed 10 years per period if all of the conditions specified in subdivision (a) are met for that succeeding period.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the uniquely difficult fiscal pressures being experienced by the City of Fort Bragg in providing essential transportation services and the County of San Joaquin in providing funding for countywide library programs and operations.

CHAPTER 896

An act to amend Sections 2201 and 21000 of, to add Section 9082.5 to, and to repeal Sections 9165, 9284, 9318, and 9505 of, the Elections Code, relating to elections.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 2201 of the Elections Code is amended to read:

2201. The county elections official shall cancel the registration in the following cases:

(a) At the signed, written request of the person registered.

(b) When the mental incompetency of the person registered is legally established as provided in Sections 2208, 2209, 2210, and 2211.

(c) Upon proof that the person is presently imprisoned or on parole for conviction of a felony.

(d) Upon the production of a certified copy of a judgment directing the cancellation to be made.

(e) Upon the death of the person registered.

(f) Pursuant to Article 2 (commencing with Section 2220).

(g) Upon receipt of any mailing returned by the postal service as undeliverable.

A blank affidavit of registration shall immediately be mailed to the address from which a cancellation is effected pursuant to this subdivision.

(h) Upon official notification that the voter is registered to vote in another county or state.

(i) Upon proof that the person is otherwise ineligible to vote.

SEC. 2. Section 9082.5 is added to the Elections Code, to read:

9082.5. The Secretary of State shall cause to be produced an audiocassette recorded version of the state ballot pamphlet. This recorded cassette version shall be made available in quantities to be determined by the Secretary of State and shall contain an impartial

summary, arguments for and against, rebuttal arguments, and other information concerning each measure that the Secretary of State determines will make the cassette recorded version of the state ballot pamphlet easier to understand or more useful to the average voter.

SEC. 3. Section 9165 of the Elections Code is repealed.

SEC. 4. Section 9284 of the Elections Code is repealed.

SEC. 5. Section 9318 of the Elections Code is repealed.

SEC. 6. Section 9505 of the Elections Code is repealed.

SEC. 7. Section 21000 of the Elections Code is amended to read:

21000. The county elections official in each county shall compile and make available to the Legislature or any appropriate committee of the Legislature any information and statistics that may be necessary for use in connection with the reapportionment of legislative districts, including, but not limited to, precinct maps indicating the boundaries of municipalities, school districts, judicial districts, Assembly districts, senatorial districts and congressional districts, and lists showing the election returns for each precinct in the county at each statewide election. If the county elections official stores the information and statistics in data processing files, he or she shall make the files available, along with whatever documentation shall be necessary in order to allow the use of the files by the appropriate committee of the Legislature and shall retain these files until the next reapportionment has been completed.

Each precinct shall be identified according to the census tract or enumeration district in which it is located. In the case of any precinct that is divided among two or more census tracts or enumeration districts, the county elections official shall include an estimate of the proportion of the precinct's registered voters in each census tract or enumeration district. If the United States Bureau of the Census divides or alters any census tract or enumeration district between the time of an election and the census upon which the reapportionment is based, the county elections official shall provide whatever corrections or additional information may be necessary to reflect those changes.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 897

An act to amend Sections 20111, 20113, 20114, 20116, 20651, 20654, 20655, and 20657 of, and to repeal Section 20651.5 of, the Public Contract Code, relating to local agency contracts.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 20111 of the Public Contract Code is amended to read:

20111. (a) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.

(2) Services, except construction services.

(3) Repairs, including maintenance as defined in Section 20115, that are not a public project as defined in subdivision (c) of Section 22002.

The contract shall be let to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars ($15,000) or more, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) This section applies to all equipment, materials, or supplies, whether patented or otherwise, and to contracts awarded pursuant to subdivision (a) of Section 2000. This section shall not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any work done by day labor or by force account pursuant to Section 20114.

(d) Commencing January 1, 1997, the Superintendent of Public Instruction shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars ($100).

SEC. 2. Section 20113 of the Public Contract Code is amended to read:

20113. (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of public schools to permit the continuance of existing school classes, or to avoid danger to life or property, the board may, by unanimous vote, with the approval of the county superintendent of schools, do either of the following:

(1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

(2) Notwithstanding Section 20114, authorize the use of day labor or force account for the purpose.

(b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.

SEC. 3. Section 20114 of the Public Contract Code is amended to read:

20114. (a) In each school district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20115 by day labor, or by force account, whenever the total number of hours on the job does not exceed 350 hours. Moreover, in any school district having an average daily attendance of 35,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance, as defined in Section 20115, by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, or when the cost of material does not exceed twenty-one thousand dollars ($21,000).

(b) For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

SEC. 4. Section 20116 of the Public Contract Code is amended to read:

20116. It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

Informal bidding may be used on work, projects, services, or purchases that cost up to the limits set forth in this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in any manner as the district deems appropriate.

SEC. 5. Section 20651 of the Public Contract Code is amended to read:

20651. (a) The governing board of any community college district shall let any contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.

(2) Services, except construction services.

(3) Repairs, including maintenance as defined in Section 20656, that are not a public project as defined in subdivision (c) of Section 22002.

The contract shall be let to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars ($15,000) or more to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the community college district.

(3) A certified check made payable to the community college district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the community college district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

(c) This section applies to all equipment, materials, or supplies, whether patented or otherwise. This section shall not apply to

professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any works done by day labor or by force account pursuant to Section 20655.

(d) Commencing January 1, 1997, the Board of Governors of the California Community Colleges shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars ($100).

SEC. 6. Section 20651.5 of the Public Contract Code is repealed.

SEC. 7. Section 20654 of the Public Contract Code is amended to read:

20654. (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of the college, or to permit the continuance of existing college classes, or to avoid danger to life or property, the board may by unanimous vote, with the approval of the county superintendent of schools, do either of the following:

(1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

(2) Notwithstanding Section 20655, authorize the use of day labor or force account for the purpose.

(b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.

SEC. 8. Section 20655 of the Public Contract Code is amended to read:

20655. (a) In each community college district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20656 by day labor, or by force account, whenever the total number of hours on the job does not exceed 350 hours. Moreover, in any district whose number of full-time equivalent students is 15,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance, as defined in Section 20656, by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, or when the cost of materials does not exceed twenty-one thousand dollars ($21,000).

(b) For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

SEC. 9. Section 20657 of the Public Contract Code is amended to read:

20657. It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California Community College Budget and Accounting Manual for a period of not less than three years after completion of the project.

Informal bidding may be used on work, projects, services, or purchases that cost up to the limits set forth in this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects, in any manner as the district deems appropriate.

CHAPTER 898

An act to amend Section 1094.6 of the Code of Civil Procedure, and to add Section 53069.4 to the Government Code, relating to administrative citations.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 1094.6 of the Code of Civil Procedure is amended to read:

1094.6. (a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced. If the decision

is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing. If there is a provision for reconsideration, the decision is final for purposes of this section upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this section on the date that reconsideration is rejected. If there is a provision for a written decision or written findings, the decision is final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed.

(c) The complete record of the proceedings shall be prepared by the local agency or its commission, board, officer, or agent which made the decision and shall be delivered to the petitioner within 190 days after he has filed a written request therefor. The local agency may recover from the petitioner its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

(d) If the petitioner files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the petitioner or his attorney of record, if he has one.

(e) As used in this section, decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, denying an application for a permit, license, or other entitlement, imposing a civil or administrative penalty, fine, charge, or cost, or denying an application for any retirement benefit or allowance.

(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section.

As used in this subdivision, "party" means an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit or allowance has been denied.

(g) This section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which case the shorter statute of limitations shall apply.

SEC. 2. Section 53069.4 is added to the Government Code, to read:

53069.4. (a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900.

(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1), shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(b) (1) Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the municipal court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be twenty-five dollars ($25). The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the twenty-five dollar ($25) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall

be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

CHAPTER 899

An act relating to earthquake insurance, and making an appropriation therefor.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Many homeowners could significantly reduce their risk of loss from the peril of earthquake by retrofitting their homes in conformance with appropriate building and safety codes, including, but not limited to, securing the dwelling to its foundation, bracing of walls, and the strapping of water heaters.

(b) Reduced earthquake insurance premiums, reduced deductibles, or increased coverage may be feasible as a result of home retrofits that reduce the risks associated with earthquake damage.

(c) It is in the public interest to provide financial support to help the owners of residential dwellings, particularly low- and moderate-income households, who reside in high-risk dwellings, pay for the costs of home retrofits to help reduce the risk of damages caused by earthquakes.

SEC. 2. The Department of Insurance shall establish a program for residential grants and loans to help pay for the retrofitting of high risk residential dwellings owned or occupied by low- and moderate-income households in order to minimize the risk of earthquake damage to those dwellings and thereby reduce the costs of residential earthquake insurance. While owner-occupied dwellings shall be eligible for both grants and loans, dwellings that are not owner-occupied shall only be eligible for loans. To the maximum extent feasible, the department shall use the funds to match any

federal funds made available to retrofit single- and multifamily-residential dwellings.

SEC. 3. The sum of four million four hundred thousand dollars ($4,400,000) is appropriated from the California Residential Earthquake Recovery Fund to the Department of Insurance for the program established pursuant to this act. During the second half of the 1995–96 fiscal year, the Department of Insurance may use up to one hundred fifty-nine thousand dollars ($159,000) for costs of initial implementation and administration of the program. Thereafter, no more than two hundred thousand dollars ($200,000) per fiscal year may be used by the department to administer this program.

Money appropriated by this section shall be available for expenditure until July 1, 2000. On and after that date, the program established by this act shall no longer be operative.

CHAPTER 900

An act to amend Sections 45313 and 88132 of the Education Code, relating to schools.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 45313 of the Education Code is amended to read:

45313. The legal counsel of the governing board shall aid and represent the commission in all legal matters. If the legal counsel does not respond to a written request by the commission for aid or representation within 15 working days of receipt of the written request, the counsel is deemed to have refused to aid or represent the commission in that matter.

The legal counsel shall refuse to represent the commission in circumstances in which the counsel knows, or has reason to know, that at the time the request is made a conflict exists between the interests of the commission and the interests of the governing board or the school district.

If the legal counsel refuses to aid or represent the commission in a legal matter, the commission may employ its own attorney, and the reasonable cost thereof shall constitute a legal charge against the general funds of the school district.

SEC. 2. Section 88132 of the Education Code is amended to read:

88132. The legal counsel of the governing board shall aid and represent the commission in all legal matters. If the legal counsel does not respond to a written request by the commission for aid or representation within 15 working days of receipt of the written

request, the counsel is deemed to have refused to aid or represent the commission in that matter.

The legal counsel shall refuse to represent the commission in circumstances in which the counsel knows, or has reason to know, that at the time the request is made a conflict exists between the interests of the commission and the interests of the governing board or the community college district.

If the legal counsel refuses to aid or represent the commission in a legal matter, the commission may employ its own attorney, and the reasonable cost thereof shall constitute a legal charge against the general funds of the community college district.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 901

An act to amend Section 12076 of the Penal Code, relating to firearms.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) (1) Two copies of the original sheet of the register, on the date of sale, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(2) One copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department, the copy of the original sheet shall be mailed to the sheriff of the county wherein the sale is made. This copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(3) A photocopy of the original shall be provided to the purchaser by the dealer.

(4) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of

Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) to this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071.

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (d) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(f) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Sections 12289 and 12809.

(g) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(h) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(i) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(j) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

(4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 2. Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) (1) Two copies of the original sheet of the register, on the date of sale, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(2) One copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department, the copy of the original sheet shall be mailed to the sheriff of the county wherein the sale is made. This copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(3) A photocopy of the original shall be provided to the purchaser by the dealer.

(4) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) to this subdivision, the costs of the State Department

of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071.

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (d) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(f) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Sections 12289 and 12809.

(g) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(h) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) or paragraph (2) of subdivision (t) of Section 12078.

(i) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(j) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

(4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 3. Section 2 of this bill incorporates amendments to Section 12076 of the Penal Code proposed by both this bill and AB 70. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 12076 of the Penal Code, and (3) this bill is enacted after AB 70, in which case Section 1 of this bill shall not become operative.

CHAPTER 902

An act to amend Section 50081 of the Government Code, and to amend Section 12081 of the Penal Code, relating to peace officers.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 50081 of the Government Code is amended to read:

50081. (a) To the extent that funds have been made available to a local agency pursuant to Section 50082, the legislative body of a local agency shall furnish each newly hired police officer and deputy

sheriff employed full time by the local agency with a service revolver or other suitable pistol, holster, belt and ammunition, a nightstick, handcuffs, raincoats, and rainboots.

(b) The following items are recommended to be provided by local agencies but are not reimbursable pursuant to Section 50082:

(1) Offduty holster.

(2) Whistle.

(3) Flashlight, flashlight batteries, and flashlight bulb.

(4) Chemical Mace and chemical Mace holder.

(5) Utility jacket.

(6) Protective vest.

(c) Issued equipment shall remain the property of the local agency and shall be returned upon request of the local agency. However, notwithstanding any other law, and as long as the item is not needed as evidence in a pending criminal or civil action or investigation, any local agency shall donate the personal effects, including pistols, revolvers, or other firearms capable of being concealed upon the person that have been rendered inoperable and shooting medals, of any police officer or deputy sheriff employed by the agency who is killed in the line of duty, to the family of the officer upon the request of the family. The officer's protective vest, ammunition, and chemical Mace shall not be made available to the family and shall remain the property of the local agency.

(d) Any requirement of a basic firearms safety certificate for persons who anticipate the transfer of a pistol, revolver, or other firearm capable of being concealed upon the person shall not apply to a person to whom an inoperable pistol, revolver, or other firearm capable of being concealed upon the person is donated pursuant to this section.

SEC. 2. Section 12081 of the Penal Code is amended to read:

12081. A basic firearms safety certificate shall not be required for any of the following transactions:

(a) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a dealer.

(b) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to an active member of the United States Armed Forces, the National Guard, the Air National Guard, and the active reserve components of the United States, who is properly identified. For purposes of this subdivision, proper identification includes the Armed Forces Identification Card, or other written documents certifying that the person is an active member of the United States Armed Forces, the National Guard, the

Air National Guard, or the active reserve components of the United States.

(d) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to any person honorably discharged from the United States Armed Forces, the National Guard, the Air National Guard, or active reserve components of the United States who is properly identified. For purposes of this subdivision, proper identification includes a Retired Armed Forces Identification Card, or other written document certifying the person as being honorably discharged.

(e) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to any of the following persons who are properly identified:

(1) Any California or federal peace officer who is authorized to carry a firearm while on duty.

(2) Any honorably retired peace officer, as defined in Section 830.1, 830.2, or subdivision (c) of Section 830.5.

(3) Any honorably retired federal officers or agents who were authorized to, and did, carry firearms in the course and scope of their duties and are authorized to carry firearms pursuant to subdivision (i) of Section 12027.

(4) Any persons who have permits to carry pistols, revolvers, or other firearms capable of being concealed upon the person issued pursuant to Article 3 (commencing with Section 12050) of Chapter 1.

(5) Any persons who have a certificate of competency or a certificate of completion in hunter safety as provided in Article 2.5 (commencing with Section 3049) of Chapter 1 of Part 1 of Division 4 of the Fish and Game Code, which bears a hunter safety instruction validation stamp affixed thereto.

(6) Any person who holds a valid hunting license issued by the State of California.

(7) Any person who is authorized to carry loaded firearms pursuant to subdivision (c) or (d) of Section 12031.

(8) Any person who has been issued a certificate pursuant to Section 12033.

(9) Any basic firearms safety instructor certified by the department pursuant to Section 12805.

(10) Persons who are properly identified as authorized participants in shooting matches approved by the Director of Civilian Marksmanship pursuant to the applicable provisions of Title 10 of the United States Code.

(11) Persons who have successfully completed the course of training specified in Section 832.

(12) Any person who receives an inoperable pistol, revolver, or other firearm capable of being concealed upon the person pursuant to Section 50081 of the Government Code.

SEC. 3. Section 12081 of the Penal Code is amended to read:

12081. A basic firearms safety certificate shall not be required for any of the following transactions:

(a) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a dealer.

(b) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to an active member of the United States Armed Forces, the National Guard, the Air National Guard, and the active reserve components of the United States, who is properly identified. For purposes of this subdivision, proper identification includes the Armed Forces Identification Card, or other written documents certifying that the person is an active member of the United States Armed Forces, the National Guard, the Air National Guard, or the active reserve components of the United States.

(d) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to any person honorably discharged from the United States Armed Forces, the National Guard, the Air National Guard, or active reserve components of the United States who is properly identified. For purposes of this subdivision, proper identification includes a Retired Armed Forces Identification Card, or other written document certifying the person as being honorably discharged.

(e) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to any of the following persons who are properly identified:

(1) Any California or federal peace officer who is authorized to carry a firearm while on duty.

(2) Any honorably retired peace officer, as defined in Section 830.1, 830.2, or subdivision (c) of Section 830.5.

(3) Any honorably retired federal officers or agents who were authorized to, and did, carry firearms in the course and scope of their duties and are authorized to carry firearms pursuant to subdivision (i) of Section 12027.

(4) Any persons who have permits to carry pistols, revolvers, or other firearms capable of being concealed upon the person issued pursuant to Article 3 (commencing with Section 12050) of Chapter 1.

(5) Any persons who have a certificate of competency or a certificate of completion in hunter safety as provided in Article 2.5 (commencing with Section 3049) of Chapter 1 of Part 1 of Division 4 of the Fish and Game Code, which bears a hunter safety instruction validation stamp affixed thereto.

(6) Any person who holds a valid hunting license issued by the State of California.

(7) Any person who is authorized to carry loaded firearms pursuant to subdivision (c) or (d) of Section 12031.

(8) Any person who has been issued a certificate pursuant to Section 12033.

(9) Any basic firearms safety instructor certified by the department pursuant to Section 12805.

(10) Persons who are properly identified as authorized participants in shooting matches approved by the Director of Civilian Marksmanship pursuant to the applicable provisions of Title 10 of the United States Code.

(11) Persons who have successfully completed the course of training specified in Section 832.

(12) Any person who receives an inoperable pistol, revolver, or other firearm capable of being concealed upon the person pursuant to Section 50081 of the Government Code.

(f) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person which is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, to a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who has a current certificate of eligibility issued to him or her pursuant to Section 12071.

SEC. 4. Section 3 of this bill incorporates amendments to Section 12081 of the Penal Code proposed by both this bill and AB 70. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 12081 of the Penal Code, and (3) this bill is enacted after AB 70, in which case Section 2 of this bill shall not become operative.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 903

An act to amend Sections 750, 750.5, 751, 751.5 and 6354 of, to add Sections 751.8 and 752.5 to, and to repeal and add Section 752 of, the Labor Code, relating to employment.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 750 of the Labor Code is amended to read:

750. (a) Except as otherwise provided in this chapter, no employee may be employed for a period that exceeds eight hours within any 24-hour period and the hours of employment of any workday shall be consecutive, excluding intermissions for meals, for all persons who are employed or engaged in work in any of the following:

(1) Underground mines.

(2) Smelters and plants for the reduction or refining of ores or metals.

(b) No provision of this chapter applies to quarries or other operations for the extraction of nonmetallic minerals, including, but not limited to, sand, gravel, and rock.

(c) No provision of this chapter applies to an employee who is employed in an executive, administrative, or professional capacity, or employed as an outside salesperson.

SEC. 2. Section 750.5 of the Labor Code is amended to read:

750.5. Notwithstanding Section 750, an employee may be employed for a period that exceeds eight hours within a 24-hour period, under the circumstances specified in subdivision (a), (b), or (c), as follows:

(a) If the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of the employees.

(b) If a two-thirds majority of the affected employees of that employer whose hours are regulated by this chapter have voted in an election to adopt a policy that specifies periods of work that may exceed eight hours in a 24-hour period, and the employer adopts that policy, subject to all of the following conditions:

(1) The agreement adopted with respect to that policy reflects the results of the election.

(2) The election is conducted, at the expense of the employer, with the use of secret ballots, during regular working hours. Upon the written request of an employee to his or her employer, or to the Labor Commissioner, made no later than 10 days prior to the date set for the election, the employer shall cause the election to be

conducted by a neutral third party with experience in conducting employee elections. If such a written request is made to the commissioner pursuant to this paragraph, the commissioner shall not disclose the identity of the employee and shall notify the employer, no later than five days prior to the date set for the election, that the election is required to be conducted by a neutral third party. Such an election may be conducted by utilizing mail ballots.

(3) All employees of that employer whose hours are regulated by this chapter and who have become employed by that employer within 24 hours of the time the election is commenced are eligible to vote in the election.

(4) The policy shall be effective for the period specified therein, not exceeding 12 months.

(5) No later than 14 days prior to the date set for an election, the employer shall do all of the following:

(A) Provide a written notice to the affected employees that describes the effects the proposed work schedule would have on the employees' wages, hours, and benefits, and the employees' rights under this chapter, including the right to request that the election be conducted by a neutral third party pursuant to this section, and to file a complaint against the employer pursuant to this chapter.

(B) Provide a written statement to the affected employees, prepared by a neutral source knowledgeable in health and safety matters and unaffiliated with the employer, that explains any health and safety considerations of extended work shifts.

(C) Hold informational meetings for the affected employees on each shift during the regular working hours of the affected employees. At each of these meetings, the employer shall explain the effect of the proposed policy on the hours and compensation of the employees. Written notice of the time, date, place, and purpose of these informational meetings shall be conspicuously posted in at least three locations throughout the mine site for at least seven consecutive days before the date of the meetings. Written notice of the time, date, place, and purpose of the election shall be posted in the same manner and for the same period. Failure to comply with the procedural requirements of this paragraph shall void the results of the election for purposes of this section.

(6) Any employer that establishes a regular scheduled workday pursuant to this subdivision shall make a reasonable attempt to place an employee, who was eligible to participate in the election that authorized an extended workday schedule and who is unable or unwilling to work the extended schedule, in an alternative work assignment that the employee is capable of performing. An employer shall not be required to offer an alternative work assignment to an employee if an alternative work assignment that the employee is capable of performing is not available or if the employee commenced his or her employment after the election.

(c) On the day a scheduled change of shift takes effect.

SEC. 3. Section 751 of the Labor Code is amended to read:

751. In the case of an emergency where life or property is in imminent danger, the work shift may be extended during the continuance of the emergency.

SEC. 4. Section 751.5 of the Labor Code is amended to read:

751.5. Where emergency repairs to, or maintenance or replacement of, machinery or equipment are necessary for the continuous operation thereof, the hours that an employee may be engaged in performing the emergency repairs, maintenance, or replacement, may, during the pendency of the emergency, exceed the period specified in Section 750.

SEC. 5. Section 751.8 is added to the Labor Code, to read:

751.8. (a) Notwithstanding Section 750, the period of employment may exceed eight hours in any 24-hour period if the employee is paid at the overtime rate of pay for hours worked in excess of that employee's regularly scheduled shift and for hours worked in excess of 40 hours in a seven-day period. Unless regularly scheduled shifts are established pursuant to Section 750.5, overtime rates of pay shall be paid for all hours worked in excess of those hours prescribed by Section 750 as the maximum allowable hours of employment.

(b) All work performed in any workday in excess of the scheduled hours established by an agreement pursuant to subdivision (b) of Section 750.5 up to and including 12 hours, or in excess of 40 hours in a workweek, shall be compensated at one and one-half times the employee's regular rate of compensation. All work performed in any workday in excess of 12 hours shall be compensated at double the employee's regular rate of compensation. No hours that are compensated at either one and one-half times, or double, the regular rate of compensation shall be included in determining the number of hours an employee has worked in a workweek for purposes of computing premium compensation.

SEC. 6. Section 752 of the Labor Code is repealed.

SEC. 7. Section 752 is added to the Labor Code, to read:

752. (a) Any affected employee, or his or her representative, may file a complaint with the Labor Commissioner concerning the conduct of an election pursuant to subdivision (b) of Section 750.5 within 14 days following notice of the outcome of the election. The Labor Commissioner shall investigate the complaint and shall invalidate the election if the commissioner finds that misconduct has occurred that could have affected the outcome of the election. If the election is invalidated, the commissioner shall prohibit the employer from conducting a similar election for a period of 12 months.

(b) Any employer, or representative of an employer, that violates Section 750 or 751.8 shall be subject to a civil penalty as follows:

(1) For any initial violation that is intentionally committed, fifty dollars ($50) for each affected employee for each violation for each pay period.

(2) For each subsequent violation for the same offense, one hundred dollars ($100) for each violation for each affected employee for each pay period, regardless of whether the initial violation is intentionally committed.

(c) If the Labor Commissioner determines that an employer has failed to comply with paragraph (6) of subdivision (b) of Section 750.5, the Labor Commissioner shall order the employer to comply. The order, in appropriate cases, shall include provisions for reinstatement and back pay.

(d) An employer shall not retaliate in any way against an employee for exercising any right pursuant to this chapter.

SEC. 8. Section 752.5 is added to the Labor Code, to read:

752.5. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. Section 6354 of the Labor Code is amended to read:

6354. The division shall, upon request, provide a full range of occupational safety and health consulting services to any employer or employee group. These consulting services shall include:

(a) A program for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring. The hazards, industries, and places of employment shall be identified from the data system that is used in the targeted inspection program pursuant to Section 6314.1. The division shall develop procedures for offering consultation services to high hazard employers who are identified pursuant to this section. The services may include the development of educational material and procedures for reducing or eliminating safety and health hazards, conducting workplace surveys to identify health and safety problems, and development of plans to improve employer health and safety loss records.

The program shall include a component for reducing the number of work-related, repetitive motion injuries, including, but not limited to, back injuries. The division may formulate recommendations for reducing repetitive motion injuries after conducting a survey of the workplace of the employer who accepts services of the division. The recommendations shall include, wherever appropriate, the application of generally accepted ergonomic and engineering principles to eliminate repetitive motions that are generally expected to result in injuries to workers. The recommendations shall also include, wherever appropriate, training programs to instruct workers in methods for performing job-related movements, such as lifting heavy objects, in a manner that minimizes strain and provides safeguards against injury.

The division shall establish model injury and illness prevention training programs to prevent repetitive motion injuries, including

recommendations for the minimum qualifications of instructors. The model programs shall be made available to employers, employer associations, workers' compensation insurers, and employee organizations on request.

(b) A program for providing assistance in the development of injury prevention programs for employees and employers. The highest priority for the division's consulting services shall be given to development of these programs for businesses with fewer than 250 employees in industries identified in the regional plans developed pursuant to subdivision (b) of Section 6314.1.

(c) A program for providing employers or employees with information, advice, and recommendations on maintaining safe employment or place of employment, and on applicable occupational safety and health standards, techniques, devices, methods, practices, or programs.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 904

An act to amend Section 1211 of the Code of Civil Procedure, and to add Section 292 to, and to amend Section 6222 of, the Family Code, relating to family law.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 1211 of the Code of Civil Procedure is amended to read:

1211. (a) When a contempt is committed in the immediate view and presence of the court, or of the judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed.

When the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officers.

(b) Filing of the Judicial Council form entitled "Order to Show Cause and Affidavit for Contempt (Family Law)" shall constitute compliance with this section.

SEC. 2. Section 292 is added to the Family Code, to read:

292. (a) The Judicial Council shall modify the title of its existing form, "Order to Show Cause and Declaration for Contempt (Family Law)," to "Order to Show Cause and Affidavit for Contempt (Family Law)."

(b) The Judicial Council shall prescribe a form entitled "Affidavit of Facts Constituting Contempt" that a party seeking to enforce a judgment or order made or entered pursuant to this code by contempt may use as an attachment to the Judicial Council form entitled "Order to Show Cause and Affidavit for Contempt (Family Law)." The form shall provide in the simplest language possible:

(1) The basic information needed to sustain a cause of action for contempt, including, but not limited to, the elements of a cause of action for contempt.

(2) Instructions on how to prepare and submit the Order to Show Cause and Affidavit for Contempt (Family Law) and the Affidavit of Facts Constituting Contempt.

(3) Lines for the date and a signature made under penalty of perjury.

(c) Section 1211.5 of the Code of Civil Procedure shall apply to the Order to Show Cause and Affidavit for Contempt (Family Law) and the Affidavit of Facts Constituting Contempt.

SEC. 3. Section 6222 of the Family Code is amended to read:

6222. (a) There is no filing fee for a petition or response, or for a paper seeking the modification or enforcement of a protective order filed in a proceeding brought pursuant to this division.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver.

(c) The declaration required by subdivision (b) shall be on one of the following forms:

(1) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 6226.

(d) In conjunction with a hearing pursuant to this division, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this division.

SEC. 4. Section 6222 of the Family Code is amended to read:

6222. (a) There is no filing fee for a petition, or response, or for a paper seeking the modification or enforcement of a protective order filed in a proceeding brought pursuant to this division.

(b) There is no fee payable by a petitioner to a law enforcement agency for serving an order issued under this division.

SEC. 5. Section 4 of this bill incorporates amendments to Section 6222 of the Family Code proposed by both this bill and SB 187. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 6222 of the Family Code, and (3) this bill is enacted after SB 187, in which case Section 3 of this bill shall not become operative.

CHAPTER 905

An act to amend Section 4801 of the Penal Code, relating to the Board of Prison Terms.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 4801 of the Penal Code is amended to read:

4801. The Board of Prison Terms may report to the Governor, from time to time, the names of any and all persons imprisoned in any state prison who, in its judgment, ought to have a commutation of sentence or be pardoned and set at liberty on account of good conduct, or unusual term of sentence, or any other cause, including evidence of battered woman syndrome. For purposes of this section, "evidence of battered woman syndrome" may include evidence of the effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization.

CHAPTER 906

An act to amend Section 38773.5 of the Government Code, to amend Section 17980.7 of the Health and Safety Code, and to amend Section 3691 of the Revenue and Taxation Code, relating to housing.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 38773.5 of the Government Code is amended to read:

38773.5. (a) As an alternative to the procedure authorized by Section 38773.1, the legislative body may by ordinance establish a procedure for the abatement of a nuisance and make the cost of abatement of a nuisance upon a parcel of land a special assessment against that parcel. Any procedure established pursuant to this section shall include notice, by certified mail, to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

(b) A local agency that has imposed an assessment pursuant to this section may, subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

(c) Notices or instruments relating to the abatement proceeding or special assessment shall be entitled to recordation.

SEC. 2. Section 17980.7 of the Health and Safety Code is amended to read:

17980.7. If the owner fails to comply with the terms of the order or notice pursuant to Section 17980.6, the following provisions shall apply:

(a) The enforcement agency may seek and the court shall order imposition of the penalties provided for under Chapter 6 (commencing with Section 17995).

(b) (1) The enforcement agency may seek and the court may order the owner to not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation, or amortization paid or incurred with respect to the cited structure, in the taxable year of the initial order or notice, in lieu of the enforcement agency processing a violation in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code.

(2) If the owner fails to comply with the terms of the order or notice to correct the condition that caused the violation pursuant to subdivision (a) of Section 17980.5, the court may order the owner to not claim these tax benefits for the following year.

(c) The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was served not less than three days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists.

(1) In appointing a receiver, the court shall consider whether the owner has been afforded a reasonable opportunity to correct the conditions cited in the notice of violation.

(2) The court shall not appoint any person as a receiver unless the person has demonstrated to the court his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building.

(3) If a receiver is appointed, the owner and his or her agent of the substandard building shall be enjoined from collecting rents from the tenants, interfering with the receiver in the operation of the substandard building, and encumbering or transferring the substandard building or real property upon which the building is situated.

(4) Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:

(A) To take full and complete control of the substandard property.

(B) To manage the substandard building and pay expenses of the operation of the substandard building and real property upon which the building is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property.

(C) To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.

(D) To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation.

(E) To collect all rents and income from the substandard building.

(F) To use all rents and income from the substandard building to pay for the cost of rehabilitation and repairs determined by the court as necessary to correct the conditions cited in the notice of violation.

(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and secure that debt, with court approval, with a lien on the real property upon which the substandard building is located. The lien shall be recorded in the county recorder's office in the county within which the building is located.

(H) To exercise the powers granted receivers under Section 568 of the Code of Civil Procedure.

(5) The receiver shall be entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages.

(6) If the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the substandard building by any tenant, to the extent that the tenant cannot safely reside in his or her unit, then the receiver shall provide relocation benefits in accordance with subparagraph (A) of paragraph (3) of subdivision (d).

(7) The relocation compensation provided for in this section shall not preempt any local ordinance that provides for greater relocation assistance.

(8) In addition to any reporting required by the court, the receiver shall prepare monthly reports to the state or local enforcement agency which shall contain information on at least the following items:

(A) The total amount of rent payments received.

(B) Nature and amount of contracts negotiated relative to the operation or repair of the property.

(C) Payments made toward the repair of the premises.

(D) Progress of necessary repairs.

(E) Other payments made relative to the operation of the building.

(F) Amount of tenant relocation benefits paid.

(9) The receiver shall be discharged when the conditions cited in the notice of violation have been remedied in accordance with the court order or judgment and a complete accounting of all costs and repairs has been delivered to the court. Upon removal of the condition, the owner, the mortgagee, or any lienor of record may apply for the discharge of all moneys not used by the receiver for removal of the condition and all other costs authorized by this section.

(10) After discharging the receiver, the court may retain jurisdiction for a time period not to exceed 18 consecutive months, and require the owner and the enforcement agency responsible for enforcing Section 17980 to report to the court in accordance with a schedule determined by the court.

(11) The prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs as may be fixed by the court.

(12) The county recorder may charge and collect fees for the recording of all notices and other documents required by this section pursuant to Article 5 (commencing with Section 27360) of Chapter 6 of Division 2 of Title 3 of the Government Code.

(13) Nothing in this section shall be construed to limit those rights available to tenants and owners under any other provision of the law.

(14) Nothing in this section shall be construed to deprive an owner of a substandard building of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders which are issued by the enforcement agency or the court.

(d) If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to subdivision (a) of Section 17980.6, upon the entry of any order or judgment, the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.

(2) Order that the local enforcement agency shall provide the tenant with notice of the court order or judgment.

(3) (A) Order that if the owner undertakes repairs or rehabilitation as a result of being cited for a notice under this chapter, and if the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the premises by any lawful tenant, so that the tenant cannot safely reside in the premises, then the owner shall provide or pay relocation benefits to each lawful tenant. These benefits shall consist of actual reasonable moving and storage costs and relocation compensation. The actual moving and storage costs shall consist of all of the following:

(i) Transportation of the tenant's personal property to the new location. The new location shall be in close proximity to the substandard premises, except where relocation to a new location beyond a close proximity is determined by the court to be justified.

(ii) Packing, crating, unpacking, and uncrating the tenant's personal property.

(iii) Insurance of the tenant's property while in transit.

(iv) The reasonable replacement value of property lost, stolen, or damaged (not through the fault or negligence of the displaced person, his or her agent or employee) in the process of moving, where insurance covering the loss, theft, or damage is not reasonably available.

(v) The cost of disconnecting, dismantling, removing, reassembling, reconnecting, and reinstalling machinery, equipment, or other personal property of the tenant, including connection charges imposed by utility companies for starting utility service.

(B) (i) The relocation compensation shall be an amount equal to the differential between the contract rent and the fair market rental value determined by the federal Department of Housing and Urban Development for a unit of comparable size within the area for the period that the unit is being repaired, not to exceed 120 days.

(ii) If the court finds that a tenant has been substantially responsible for causing or substantially contributing to the substandard conditions, then the relocation benefits of this section shall not be paid to this tenant. Each other tenant on the premises who has been ordered to relocate due to the substandard conditions and who is not substantially responsible for causing or contributing to the conditions shall be paid these benefits and moving costs at the time that he or she actually relocates.

(4) Determine the date when the tenant is to relocate, and order the tenant to notify the enforcement agency and the owner of the address of the premises to which he has relocated within five days after the relocation.

(5) (A) Order that the owner shall offer the first right to occupancy of the premises to each tenant who received benefits pursuant to subparagraph (A) of paragraph (3), before letting the unit for rent to a third party. The owner's offer on the first right to occupancy to the tenant shall be in writing, and sent by first-class certified mail to the address given by the tenant at the time of relocation. If the owner has not been provided the tenant's address by the tenant as prescribed by this section, the owner shall not be required to provide notice under this section or offer the tenant the right to return to occupancy.

(B) The tenant shall notify the owner in writing that he or she will occupy the unit. The notice shall be sent by first-class certified mail no later than 10 days after the notice has been mailed by the owner.

(6) Order that failure to comply with any abatement order under this chapter shall be punishable by civil contempt, penalties under Chapter 6 (commencing with Section 17995), and any other penalties and fines as are available.

(e) The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a "proceeding" or "judgment" as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

(f) The term "owner," for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

(g) These remedies shall be in addition to those provided by any other law.

(h) Nothing in this section or in Section 17980.6 shall impair the rights of an owner exercising his or her rights established pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 3. Section 3691 of the Revenue and Taxation Code, as amended by Chapter 189 of the Statutes of 1995, is amended to read:

3691. (a) (1) Five years or more after the property has become tax-defaulted, the tax collector shall have the power to sell, and may sell, and, upon the request of a holder of a tax certificate sold in connection with that property, shall sell, all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of the parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale. In the case of tax-defaulted property that has been damaged by a disaster in an area declared to be a disaster area by local, state, or federal officials and whose damage has not been substantially repaired, the five-year period set forth in this subdivision shall be tolled until five years have elapsed from the date the damage to the property was incurred.

(2) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(b) (1) (A) Three years or more after the property has become tax-defaulted and subject to a nuisance abatement lien after the effective date of the act that adds this subdivision in the case of vacant residential developed property, the tax collector shall have the power to sell and may sell all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to or interest in the property, may purchase at the sale.

(B) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(2) Before the tax collector sells vacant residential developed property pursuant to this subdivision, actual notice, by certified mail, shall be provided to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

(3) Before the tax collector sells vacant residential developed property pursuant to this subdivision, notice of the sale shall be given in the manner specified by Section 3704.7.

CHAPTER 907

An act to amend Section 6345 of, and to add Section 240.5 to, the Family Code, relating to family law.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 240.5 is added to the Family Code, to read:

240.5. Notwithstanding Section 200, a judge of the municipal court may issue an order described in Section 240 when relief cannot be obtained in a timely manner from a judge of the superior court. In such a case, the applicant for the order shall set forth in the affidavit in support of the application for the order the reasons that relief could not be obtained in a timely manner from a judge of the superior court. Jurisdiction for the hearing described in Section 242 and all subsequent proceedings shall be in the superior court.

Nothing in this section shall be construed to prevent a judge of the municipal court who is serving as a judge of the superior court from issuing an order described in Section 240 without a showing that relief cannot be obtained in a timely manner from a judge of the superior court.

SEC. 2. Section 6345 of the Family Code is amended to read:

6345. (a) In the discretion of the court, the personal conduct, stay-away, and residence exclusion orders contained in a court order issued after notice and a hearing under this article may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed, upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party.

(b) Notwithstanding subdivision (a), the duration of any orders, other than the protective orders described in subdivision (a), that are also contained in a court order issued after notice and a hearing under this article, including, but not limited to, orders for custody, visitation, support, and disposition of property, shall be governed by the law relating to those specific subjects.

(c) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

CHAPTER 908

An act to add Article 5 (commencing with Section 90450) to Chapter 10 of Part 55 of the Education Code, relating to the California State University, and making an appropriation therefor.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Six historic Victorian houses, located on one block in downtown Chico, were acquired many years ago by the California State University for the purpose of removal and replacement with university facilities.

(2) These houses were subsequently listed on the National Register of Historic Places, and their location in the center of Chico makes them a potentially valuable asset in promoting greater commerce and tourism in the core of the city.

(3) The majority of citizens of Chico voted in support of a city resolution preserving the Language Houses on site.

(4) The California State University, Chico, to the greatest extent feasible, wishes to support the will of the citizens of Chico with respect to the preservation of these historic houses.

(5) The California State University does not have the fiscal resources necessary to preserve these historic houses, nor does it have the statutory authority to dispose of them to another party willing to preserve them.

(b) It is, therefore, the intent of the Legislature that the Trustees of the California State University be permitted to dispose of these houses to one or more parties willing to preserve and restore the houses on site for adaptive use, as permitted by applicable local general plans and zoning regulations. It is further the intent of the Legislature that the trustees be permitted to acquire other property to meet the needs for which this property was acquired.

SEC. 2. Article 5 (commencing with Section 90450) is added to Chapter 10 of Part 55 of the Education Code, to read:

Article 5. California State University, Chico: Language Houses

90450. Notwithstanding any other provision of law:

(a) The Trustees of the California State University may dispose of each of the six houses and land located at 504, 512, 520, 528, 536, and 544 West Third Street in Chico known as the "Language Houses" to a party or parties willing to preserve and restore the houses on site for adaptive use, as permitted by applicable local general plans and zoning regulations. The method of disposal shall be at the discretion of the trustees, but may be accomplished through sale, lease, or lease option to purchase to the highest responsible bidder or through an exchange of property with another party. The houses shall not be disposed of unless the acquiring party or parties agree to meet the requirements set forth in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code.

(b) The disposal by the California State University of the properties identified in subdivision (a) is exempt from Article 2 (commencing with Section 5020) and Article 3 (commencing with Section 5031) of Chapter 1 of Division 5 of the Public Resources Code.

(c) The net present value of the projected proceeds of a bid shall be used to determine the highest responsible bid, where applicable, pursuant to subdivision (a).

(d) The demolition of any house described in subdivision (a) by any party that acquires it, or by any representative of that party, shall result in the reversion of ownership of the land to the California State University.

(e) The removal to another site of any house described in subdivision (a) by any party that acquires it, or by any representative of that party, shall result in the reversion of ownership of the land, but not the house, to the California State University.

(f) Funds derived from the disposal authorized by subdivision (a) shall be deposited in the General Fund and are hereby continuously appropriated, without regard to fiscal years, to the Trustees of the California State University for any general fund purpose of the California State University, Chico, unless that campus has an anticipated need for the funds for capital outlay and deferred maintenance for the five-year period following the disposal, in which case the funds shall first be expended for those purposes. The Trustees of the California State University may acquire through exchange or purchase replacement property of approximately equal area as that of the property described in subdivision (a) to meet the university facility purposes for which the property described in subdivision (a) was intended. The trustees shall not request state funding for the purchase of the replacement property nor shall state funds be used to purchase the replacement property.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances set forth in subdivision (a) of Section 1 of this act and applicable only to California State University, Chico, a statute of general applicability cannot be enacted within the meaning of

Section 16 of Article IV of the California Constitution. The enactment of this special statute is therefore necessary.

CHAPTER 909

An act to add Section 12935 to the Insurance Code, relating to insurance.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. It is the intent of the Legislature that the Insurance Commissioner develop informational sheets in non-English languages that provide a general explanation in those languages of the terms most commonly used in insurance policies.

It is the further intent of the Legislature that these informational sheets are for informational purposes only, and do not create a right, duty, or obligation on the part of the insured, the insurer, the agent, the broker, or the state.

SEC. 2. Section 12935 is added to the Insurance Code, to read:

12935. (a) The commissioner, by January 1, 1997, shall develop and make available to the general public, in the two most common non-English languages spoken in the state, which are Spanish and Vietnamese, informational sheets that provide a general explanation in those languages, of the terms most commonly used in passenger automobile and pickup truck liability insurance policies.

(b) These informational sheets are intended to provide only the general explanation of these insurance terms, and in the case of a dispute between an insurer and an insured, the policy as written in English will prevail. The development of informational sheets or the use of these informational sheets by insureds, insurers, agents, brokers, or the state shall not be interpreted as creating a duty or obligation to provide additional information or insurance policies in a non-English language.

(c) An informational sheet developed by the commissioner shall include a disclaimer, prominently displayed in 24-point type print at the beginning of the informational sheet, in the non-English language, that contains all of the following information:

(1) The informational sheet is for informational purposes only.

(2) The actual terms of an insurance policy prevail over the information provided in the informational sheet.

(3) In the case of a dispute, the insurance policy is controlling and a court will rely on the policy as it is written in English to resolve the dispute.

(4) The policy is the sole source of rights and obligations of the insurer and the insured.

(5) The information contained in the informational sheets does not create rights or obligations on the part of the insured, the insurer, the agent, the broker, or the state.

(6) The informational sheet is not intended to be a substitute for the actual policy written in English.

(d) The commissioner may develop informational sheets regarding other forms of insurance.

(e) The commissioner may develop informational sheets in foreign languages, other than Spanish and Vietnamese, as needed.

(f) Once developed by the commissioner, he or she may produce public service announcements concerning the availability of these informational sheets, to be utilized in those communities that the commissioner deems would benefit from the information.

(g) This section does not prevent an insurer or licensee from advertising an insurance policy, or the availability of a foreign language informational sheet, or the availability of a translation of an insurance policy, in a language other than English if the advertisement clearly states that the insurance policy is only available in English. However, in the case of a dispute, the insurance policy is controlling and any of those advertisements for insurance policies, informational sheets, or translations shall not be construed to modify or change the insurance policy.

CHAPTER 910

An act to amend Section 29550 of the Government Code, relating to booking fees.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 29550 of the Government Code is amended to read:

29550. (a) (1) Notwithstanding any other provision of law, a county may impose a fee upon a city, special district, school district, community college district, college, or university for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city, special district, school district, community college district, college, or university, where the arrested persons are brought to the county jail for booking or detention. The fee imposed by a county pursuant to this section shall not exceed the actual administrative costs, including applicable overhead costs as permitted by federal Circular A-87

standards, as defined in subdivision (d), incurred in booking or otherwise processing arrested persons. A county may submit an invoice to a city, special district, school district, community college district, college, or university for these expenses incurred by the county on and after July 1, 1990. Counties shall fully disclose the costs allocated as federal Circular A-87 overhead.

(2) Any increase in a fee charged pursuant to this section shall be adopted by a county prior to the beginning of its fiscal year and may be adopted only after the county has provided each city, special district, school district, community college district, college, or university 45 days written notice of a public meeting held pursuant to Section 54952.2 on the fee increase and the county has conducted the public meeting.

(3) Any county that imposes a fee pursuant to this section shall negotiate a reduced fee with any city, special district, school district, community college district, college, or university within the county for any services that are performed by the arresting agency in the processing of arrestees that do not have to be duplicated by the county.

(4) This subdivision shall not apply to counties that are under a contractual agreement with a city, special district, school district, community college district, college, or university within the county that is subject to the fee.

(b) The exemption of a local agency from the payment of a fee pursuant to this subdivision does not exempt the person arrested from the payment of fees for booking or other processing.

(1) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests on any bench warrant for failure to appear in court, nor on any arrest warrant issued in connection with a crime not committed within the entity's jurisdiction.

(2) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for a person who is ordered by a court to be remanded to the county jail except that a county may charge a fee to recover those direct costs for those functions required to book a person pursuant to subdivision (g) of Section 853.6 of the Penal Code.

(3) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests made pursuant to arrest warrants originating outside of its jurisdiction.

(4) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university on parole violation arrests or probation-ordered returns to custody, unless a new charge has been filed for a crime committed in the jurisdiction of the arresting city, district, college, or university.

(5) An agency making a mutual aid request shall pay fees that result from arrests made in response to the mutual aid request except that in the event the Governor declares a state of emergency, no agency shall be charged fees for any arrest made during any riot, disturbance, or event that is subject to the declaration.

(6) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university for the arrest of a prisoner who has escaped from a county, state, or federal detention or corrections facility.

(7) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university for arrestees held in temporary detention at a court facility for purposes of arraignment when the arrestee has been previously booked at an entity detention facility.

(8) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university as the result of an arrest made by its officer assigned to a formal multiagency task force in which the county is a participant. For the purposes of this section, "formal task force" means a task force that has been established by written agreement of the participating agencies.

(9) In those counties where the cities and the county participate in a consolidated booking program and where prior to arraignment an arrestee is transferred from a city detention facility to a county detention facility, the city shall not be charged for those tasks listed in subdivision (d) that are a part of the consolidated booking program which were completed by the city prior to delivering the arrestee to the county detention facility. However, the county may charge the actual administrative costs for those additional tasks listed in subdivision (d) that are performed in order to receive the arrestee into the county detention facility.

(c) Any county whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, including applicable overhead costs incurred in booking or otherwise processing arrested persons.

(d) When the court has been notified in a manner specified by the court that a criminal justice administration fee is due the agency:

(1) A judgment of conviction may impose an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued on the order in the same manner as a judgment in a civil action, but shall not be enforceable by contempt.

(2) The court shall, as a condition of probation, order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal justice administration fee, including applicable overhead costs.

(e) As used in this section, "actual administrative costs" include only those costs for functions that are performed in order to receive an arrestee into a county detention facility. Operating expenses of the county jail facility including capitol costs and those costs involved in the housing, feeding, and care of inmates shall not be included in calculating "actual administrative costs." "Actual administrative costs" may include the cost of notifying any local agency, special district, school district, community college district, college or university of any change in the fee charged by a county pursuant to this section. "Actual administrative costs" may include any one or more of the following as related to receiving an arrestee into the county detention facility:

(1) The searching, wristbanding, bathing, clothing, fingerprinting, photographing, and medical and mental screening of an arrestee.

(2) Document preparation, retrieval, updating, filing, and court scheduling related to receiving an arrestee into the detention facility.

(3) Warrant service, processing, and detainer.

(4) Inventory of an arrestee's money and creation of cash accounts.

(5) Inventory and storage of an arrestee's property.

(6) Inventory, laundry, and storage of an arrestee's clothing.

(7) The classification of an arrestee.

(8) The direct costs of automated services utilized in paragraphs (1) to (7), inclusive.

(9) Unit management and supervision of the detention function as related to paragraphs (1) to (8), inclusive.

(f) An administrative screening fee of twenty-five dollars ($25) shall be collected from each person arrested and released on his or her own recognizance upon conviction of any criminal offense related to the arrest other than an infraction. A citation processing fee in the amount of ten dollars ($10) shall be collected from each person cited and released by any peace officer in the field or at a jail facility upon conviction of any criminal offense, other than an infraction, related to the criminal offense cited in the notice to appear. However, the court may determine a lesser fee than otherwise provided in this subdivision upon a showing that the defendant is unable to pay the full amount. All fees collected pursuant to this subdivision shall be transmitted by the county auditor monthly to the Controller for deposit in the General Fund. This subdivision applies only to convictions occurring on or after the

effective date of the act adding this subdivision and prior to June 30, 1996.

CHAPTER 911

An act to amend Section 1021.1 of the Code of Civil Procedure, relating to actions.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 1021.1 of the Code of Civil Procedure is amended to read:

1021.1. (a) Reasonable attorney's fees, may be awarded in an amount to be determined in the court's discretion, to a party to any civil action as provided by this section, and that award shall be made upon notice and motion by a party and shall be an element of the costs of suit.

(b) A party may be entitled, in the discretion of the court, to an award of attorney's fees under this section if all of the following conditions are met:

(1) The party has made an offer for judgment under Section 998.

(2) That offer was not accepted within the time provided in Section 998.

(3) The party to whom the offer was made thereafter failed to obtain a more favorable judgment.

The party making the offer shall be entitled to attorney's fees only for legal services rendered after the date of the offer.

(c) In exercising its discretion to award attorney's fees the court shall consider the following factors:

(1) The reasonableness or lack thereof, of a party's failure to accept an offer for judgment under Section 998 in light of the facts known to the party at the time, of which, in light of all of the circumstances, should have been known to the party. Reasonableness shall be determined by a consideration of at least the following matters:

(A) The then apparent merit or lack of merit in the claim that was the subject of the action.

(B) The closeness of the questions of fact and law at issue.

(C) Whether the offeror has unreasonably refused to furnish information necessary to evaluate the reasonableness of the offer.

(D) Whether the action was in the nature of a "test case," presenting questions of far-reaching importance affecting nonparties.

(E) The relief that might reasonably have been expected if the claimant should prevail.

(F) The amount of the additional delay, cost, and expense that the offeror reasonably would be expected to incur if the litigation should be prolonged.

(G) Those other matters that the court may deem relevant in the interest of justice.

(2) The amount of damages and other relief sought and the results obtained for the client.

(3) The efforts made by the parties or the attorneys to settle the controversy.

(4) The existence of any bad faith or abuse of legal procedure by the parties or the attorneys.

(d) In exercising its discretion to determine the amount of attorney's fees to be awarded, the court shall consider the following factors, except that in no event shall the amount awarded exceed a reasonable fee for the services actually rendered.

(1) Customary fees in the community in which the action or proceeding is pending charged by attorneys with similar experience or expertise.

(2) The time and labor reasonably required to be spent by the attorney or attorneys.

(3) The experience and ability of the attorneys generally within the profession and also with respect to the action or proceeding.

(4) The novelty and difficulty of the questions involved and the skill required to perform the services properly.

(5) The extent to which the acceptance of the particular matter imposes extraordinary burdens on the attorney or attorneys (A) by way of precluding other employment, (B) by the time limitations imposed by the client, or (C) by the circumstances.

(6) Whether the fee is fixed or contingent.

(7) Those other factors that the court may deem relevant in the interest of justice, including any of the factors described in subdivision (c).

(e) Nothing in this section shall be construed to repeal or modify any other statutory provision for the award of attorney's fees or to diminish any express or implied contractual right which a party to a civil action may otherwise have to obtain an award of attorney's fees for the prosecution or defense of an action.

(f) No attorney's fees shall be awarded pursuant to this section in any of the following instances:

(1) Against a party who is proceeding in forma pauperis or a party whom the court has found not to have the financial ability to pay fees or who would suffer an unreasonable financial hardship if ordered to pay fees.

(2) For or against any party with respect to any cause of action under which an award for reasonable attorney's fees is authorized or required by any other federal or California statute.

(3) For or against any party with respect to any cause of action or proceeding commenced or prosecuted under Title 7 (commencing with Section 1230.010) of Part 3.

(4) For or against any party in any action in which one or more of plaintiffs seek to proceed as a class under Section 382.

(5) For or against any party as to any cause of action the gravamen of which is personal injury, wrongful death, or injunctive relief.

(g) The determination under this section shall be made after the final disposition of the action.

(h) This section shall apply only in Riverside County and San Bernardino County. The Legislature finds and declares that, in order to assess the impact of this section on a limited basis before making it applicable on a statewide basis, it is necessary for this section to be applicable for a limited period of time in those counties.

(i) This section shall only be in effect from July 1, 1988, until January 1, 1998, and on that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends that date.

CHAPTER 912

An act to amend Section 2150 of, and to add Section 2168 to, the Elections Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 2150 of the Elections Code is amended to read:

2150. (a) The affidavit of registration shall show:

(1) The facts necessary to establish the affiant as an elector.

(2) The affiant's name at length, including his or her given name, and a middle name or initial, or if the initial of the given name is customarily used, then the initial and middle name. The affiant's given name may be preceded, at affiant's option, by the designation of Miss, Ms., Mrs., or Mr. No person shall be denied the right to register because of his or her failure to mark a prefix to the given name and shall be so advised on the voter registration card. This subdivision shall not be construed as requiring the printing of prefixes on an affidavit of registration.

(3) The affiant's place of residence, and residence telephone number, if furnished. No person shall be denied the right to register because of his or her failure to furnish a telephone number, and shall be so advised on the voter registration card.

(4) The affiant's mailing address, if different from the place of residence.

(5) The affiant's date of birth to establish that he or she will be at least 18 years of age on or before the date of the next election.

(6) The state or country of the affiant's birth.

(7) The affiant's California driver's license number, California identification card number, or other identification number as specified by the Secretary of State. No person shall be denied the right to register because of his or her failure to furnish one of these numbers, and shall be so advised on the voter registration card.

(8) The affiant's political party affiliation.

(9) That the affiant is currently not imprisoned or on parole for the conviction of a felony.

(10) A prior registration portion indicating whether the affiant has been registered at another address, under another name, or as intending to affiliate with another party. If the affiant has been so registered, he or she shall give an additional statement giving that address, name, or party.

(b) The affiant shall certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with the signature of his or her name and if affiant is unable to write he or she shall sign with a mark or cross.

(c) The affiant shall date the affidavit immediately following the affiant's signature. If any person, including a deputy registrar, assists the affiant in completing the affidavit, that person shall sign and date the affidavit below the signature of the affiant.

SEC. 2. Section 2168 is added to the Elections Code, to read:

2168. (a) The Secretary of State shall establish a statewide system to facilitate removal of duplicate or prior registrations, to facilitate the reporting of election results and voter and candidate information, and to otherwise administer and enhance election administration.

(b) The statewide system established pursuant to this section shall not replace county voter registration systems or processes.

SEC. 3. This act shall become operative only if Assembly Bill 1701 of the 1995–96 Regular Session is chaptered.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the changes proposed by this act in time for the presidential primary election of March 26, 1996, it is necessary that this act take effect immediately.

CHAPTER 913

An act to amend Sections 2150 and 2162 of, and to add Section 2168 to, the Elections Code, relating to voter registration, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

On this date I have signed Assembly Bill No. 1701.

This bill would require the Secretary of State's Office to revise the affidavit of voter registration, eliminating the occupation of the elector and replacing it with a request for a California driver's license or identification number or other identifying number specified by the Secretary of State. This bill also requires the Secretary of State to establish a statewide voter registration system, including a candidate database, and appropriates $5 million, as a loan, for that purpose.

I am reducing the appropriation for the loan from $5 million to $3.5 million, based on the Secretary of State's revised estimates for developing and implementing the statewide voter registration system. The Director of Finance is reflecting the loan appropriation as a reduction of the current year's reserve and will also determine terms and conditions for the loan which the Director deems appropriate.

With this reduction I hereby approve Assembly Bill 1701.

PETE WILSON, Governor

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

SECTION 1. Section 2150 of the Elections Code is amended to read:

2150. (a) The affidavit of registration shall show:

(1) The facts necessary to establish the affiant as an elector.

(2) The affiant's name at length, including his or her given name, and a middle name or initial, or if the initial of the given name is customarily used, then the initial and middle name. The affiant's given name may be preceded, at affiant's option, by the designation of Miss, Ms., Mrs., or Mr. No person shall be denied the right to register because of his or her failure to mark a prefix to the given name and shall be so advised on the voter registration card. This subdivision shall not be construed as requiring the printing of prefixes on an affidavit of registration.

(3) The affiant's place of residence, and residence telephone number, if furnished. No person shall be denied the right to register because of his or her failure to furnish a telephone number, and shall be so advised on the voter registration card.

(4) The affiant's mailing address, if different from the place of residence.

(5) The affiant's date of birth to establish that he or she will be at least 18 years of age on or before the date of the next election.

(6) The state or country of the affiant's birth.

(7) The affiant's California driver's license number, California identification card number, or other identification number as

specified by the Secretary of State. No person shall be denied the right to register because of his or her failure to furnish one of these numbers, and shall be so advised on the voter registration card.

(8) The affiant's political party affiliation.

(9) That the affiant is currently not imprisoned or on parole for the conviction of a felony.

(10) A prior registration portion indicating whether the affiant has been registered at another address, under another name, or as intending to affiliate with another party. If the affiant has been so registered, he or she shall give an additional statement giving that address, name, or party.

(b) The affiant shall certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with the signature of his or her name and if the affiant is unable to write he or she shall sign with a mark or cross.

(c) The affiant shall date the affidavit immediately following the affiant's signature. If any person, including a deputy registrar, assists the affiant in completing the affidavit, that person shall sign and date the affidavit below the signature of the affiant.

SEC. 2. Section 2162 of the Elections Code is amended to read:

2162. (a) No affidavits of registration other than those provided by the Secretary of State to the county elections officials or the national voter registration forms authorized pursuant to the National Voter Registration Act (42 U.S.C. Sec. 1973gg) shall be used for the registration of voters.

(b) No voter registration card shall be altered, defaced, or changed in any way, other than by the insertion of a mailing address and the affixing of postage, if mailed, or as otherwise specifically authorized by the Secretary of State, prior to distribution of the cards.

(c) The affidavit portion of a voter registration card shall not be marked, stamped, or partially or fully completed by any person other than an elector attempting to register to vote or by a person assisting the elector in completing the affidavit at the request of the elector.

SEC. 3. Section 2168 is added to the Elections Code, to read:

2168. (a) The Secretary of State shall establish a statewide system to facilitate removal of duplicate or prior registrations, to facilitate the reporting of election results and voter and candidate information, and to otherwise administer and enhance election administration.

(b) The statewide system established pursuant to this section shall not replace county voter registration systems or processes.

SEC. 4. The sum of five million dollars ($5,000,000) is hereby appropriated, without regard to fiscal years, from the General Fund to the Secretary of State as a loan, and shall be repaid with interest at the Pooled Money Investment Account rate not later than June 30, 1999, upon such terms and conditions deemed appropriate by the Director of Finance, including those specified in Section 5 of this act, for the purposes of implementing and administering Section 2168 of

the Elections Code. Any expenditure of these funds shall be contingent upon successful completion by the Secretary of State of all necessary state procurement requirements, including the alternative procurement process, and approval of a feasibility study report by the Office of Technology and the Department of Finance.

SEC. 5. (a) Repayment of the loan shall be from savings accrued from the following: reduced state costs associated with printing and mailing ballot pamphlets, attributable to removal of duplicate voter registrations; the avoidance of future costs from duplicate voter registrations; and the sale of statewide voter registration file data by the Secretary of State.

(b) Savings shall be based upon the actual reduction in the number of duplicate voter registrations from the official roster of voters prepared by each county elections official, and shall be exclusive of those duplicate or erroneous voter registrations eliminated, or required to be eliminated, pursuant to Sections 2118, 2193, and 2201 of the Elections Code, or any other provision of law.

(c) The Secretary of State shall submit a report semi-annually by January 1 and July 1 to the Joint Legislative Budget Committee, the Department of Finance, and the Legislative Analyst's Office on the status of the loan repayment and the number of duplicate voter registrations removed as specified in subdivision (b).

SEC. 6. No reimbursement is required by Section 2 of this act pursuant to Section 6 of Article XIII B of the California Constitution because Section 2 of this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of Section 2 of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 7. This act shall become operative only if Senate Bill 581 of the 1995–96 Regular Session is chaptered.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the changes proposed by this act in time for the presidential primary election of March 26, 1996, it is necessary that this act take effect immediately.

CHAPTER 914

An act to amend Section 17613 of the Government Code, to amend Sections 14205 and 14206 of the Penal Code, to amend Sections 4703 and 4703.2 of, and to add Section 95.31 to, the Revenue and Taxation

Code, and to amend Section 1 of Chapter 241 of the Statutes of 1993, relating to state and local government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

I have signed this date Assembly Bill No. 818. However, I am striking Section 10 in its entirety and I am reducing two items of appropriation in Section 11.

Section 10 would appropriate $1 million intended for five cities which are in litigation against the Department of Corrections for small community housing programs for State inmates transferred to local jails. Providing loans as Section 10 would have done would be inappropriate given the lawsuits.

I am also vetoing $54,687 of the $1,800,683.38 appropriated to the Board of Control. Two of the claims included in that appropriation should not have been approved by the Board, and therefore I am reducing the total appropriation from $1,800,683.38 to $1,745,996.38.

Specifically, I am reducing subitem "Total for Fund: General Fund" by $52,149 which would reduce this subitem from $105,635.22 to $53,486.25 to conform to a veto of claim number G286016, and $2,538 from subitem "Total for Fund: Item 5240-001-001(A)" which would reduce that subitem from $196,095.25 to $193,557.25 to conform to my veto of claim number G285625.

With the above reduction and deletion, I hereby approve AB 818.

PETE WILSON, Governor

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

SECTION 1. Section 17613 of the Government Code is amended to read:

17613. (a) The Director of Finance may, upon receipt of any report submitted pursuant to Section 17567, authorize the augmentation of the amount available for expenditure to reimburse costs mandated by the state, as defined in Section 17514, as follows:

(1) For augmentation of (A) any schedule in any item to reimburse costs mandated by the state in any budget act, or (B) the amount appropriated in a local government claims bill for reimbursement of the claims of local agencies, as defined by Section 17518, from the unencumbered balance of any other item to reimburse costs mandated by the state in that budget act or another budget act or in an appropriation for reimbursement of the claims of local agencies in another local government claims bill.

(2) For augmentation of (A) any schedule in any budget act item, or (B) any amount appropriated in a local government claims bill, when either of these augmentations is for reimbursement of mandated claims of school districts, as defined in Section 17519, when the source of this augmentation is (A) the unencumbered balance of any other scheduled amount in that budget act or another budget act, or (B) an appropriation in another local government claims bill, when either of these appropriations is for reimbursement of mandate claims of school districts. This paragraph applies only to appropriations that are made for the purpose of meeting the

minimum funding guarantee for educational programs pursuant to Section 8 of Article XVI of the California Constitution.

(b) No authorization for an augmentation pursuant to this section may be made sooner than 30 days after the notification in writing of the necessity therefor to the chairperson of the committee in each house which considers appropriations and the chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time as the chairperson of the joint committee, or his or her designee, may in each instance determine.

SEC. 2. Section 14205 of the Penal Code is amended to read:

14205. (a) All local police and sheriffs' departments shall accept any report, including any telephonic report, of a missing person, including runaways, without delay and shall give priority to the handling of these reports over the handling of reports relating to crimes involving property. In cases where the person making a report of a missing person or runaway, contacts, including by telephone, the California Highway Patrol, the California Highway Patrol may take the report, and shall immediately advise the person making the report of the name and telephone number of the police or sheriff's department having jurisdiction of the residence address of the missing person and of the name and telephone number of the police or sheriff's department having jurisdiction of the place where the person was last seen. In cases of reports involving missing persons, including, but not limited to, runaways, the local police or sheriff's department shall immediately take the report and make an assessment of reasonable steps to be taken to locate the person. If the missing person is under 12 years of age, or there is evidence that the person is at risk, the department shall broadcast a "Be On the Look-Out" bulletin, without delay, within its jurisdiction.

(b) If the person reported missing is under 12 years of age, or if there is evidence that the person is at risk, the local police, sheriff's department, or the California Highway Patrol shall submit the report to the Attorney General's office within four hours after accepting the report. After the California Law Enforcement Telecommunications System online missing person registry becomes operational, the reports shall be submitted, within four hours after accepting the report, to the Attorney General's office through the use of the California Telecommunications System.

(c) In cases where the report is taken by a department, other than that of the city or county of residence of the missing person or runaway, the department, or division of the California Highway Patrol taking the report shall, without delay, and, in the case of children under 12 years of age or where there was evidence that the missing person was at risk, within no more than 24 hours, notify, and forward a copy of the report to the police or sheriff's department or departments having jurisdiction of the residence address of the missing person or runaway and of the place where the person was last seen. The report shall also be submitted by the department or

division of the California Highway Patrol which took the report to the center.

(d) The requirements imposed by this section on local police and sheriff's departments shall not be operative after July 1, 1995, unless the governing body of that local agency adopts a resolution expressly making those requirements operative.

SEC. 3. Section 14206 of the Penal Code is amended to read:

14206. (a) (1) When any person makes a report of a missing person to a police department, sheriff's department, district attorney's office, California Highway Patrol, or other law enforcement agency, the report shall be given in person or by mail in a format acceptable to the Attorney General. That form shall include a statement authorizing the release of the dental or skeletal X-rays, or both, of the person reported missing and authorizing the release of a recent photograph of a person reported missing who is under 18 years of age. Included with the form shall be instructions which state that if the person reported missing is still missing 30 days after the report is made, the release form signed by a member of the family or next of kin of the missing person shall be taken by the family member or next of kin to the dentist, physician and surgeon, or medical facility in order to obtain the release of the dental or skeletal X-rays, or both, of that person or may be taken by a peace officer, if others fail to take action, to secure those X-rays. Notwithstanding any other provision of law, dental or skeletal X-rays, or both, shall be released by the dentist, physician and surgeon, or medical facility to the person presenting the request and shall be submitted within 10 days by that person to the police or sheriff's department or other law enforcement agency having jurisdiction over the investigation. When the person reported missing has not been found within 30 days and no family or next of kin exists or can be located, the law enforcement agency may execute a written declaration, stating that an active investigation seeking the location of the missing person is being conducted, and that the dental or skeletal X-rays, or both, are necessary for the exclusive purpose of furthering the investigation. Notwithstanding any other provision of law, the written declaration, signed by a peace officer, is sufficient authority for the dentist, physician and surgeon, or medical facility to release the missing person's dental or skeletal X-rays, or both.

(2) The form provided under this subdivision shall also state that if the person reported missing is under 18 years of age, the completed form shall be taken to the dentist, physician and surgeon, or medical facility immediately when the law enforcement agency determines that the disappearance involves evidence that the person is at risk or when the law enforcement agency determines that the person missing is under 12 years of age and has been missing at least 14 days. The form shall further provide that the dental or skeletal X-rays, or both, and a recent photograph of the missing child shall be submitted immediately to the law enforcement agency. Whenever authorized

under this subdivision to execute a written declaration to obtain the release of dental or skeletal X-rays, or both, is provided, the investigating law enforcement agency may obtain those X-rays when a person reported missing is under 18 years of age and the law enforcement agency determines that the disappearance involves evidence that the person is at risk. In each case, the law enforcement agency may confer immediately with the coroner or medical examiners and may submit its report including the dental or skeletal X-rays, or both, within 24 hours thereafter to the Attorney General. The Attorney General's office shall code and enter the dental or skeletal X-rays, or both, into the center.

(b) When a person reported missing has not been found within 45 days, the sheriff, chief of police, or other law enforcement agency conducting the investigation for the missing person may confer with the coroner or medical examiner prior to the preparation of a missing person report. The coroner or medical examiner shall cooperate with the law enforcement agency. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement agency initiating and conducting the investigation for the missing person may submit a missing person report and the dental or skeletal X-rays, or both, and photograph received pursuant to subdivision (a) to the Attorney General's office in a format acceptable to the Attorney General.

Nothing in this section prohibits a parent or guardian of a child, reported to a law enforcement agency as missing, from voluntarily submitting fingerprints, and other documents, to the law enforcement agency accepting the report for inclusion in the report which is submitted to the Attorney General.

(c) The requirements imposed by this section on local police and sheriff's departments shall not be operative after July 1, 1995, unless the governing body of that local agency adopts a resolution expressly making those requirements operative.

SEC. 4. Section 95.31 is added to the Revenue and Taxation Code, to read:

95.31. (a) Notwithstanding any other provision of law, any eligible county may, upon the recommendation of the county assessor, and by resolution of the board of supervisors of that county adopted not later than December 1 of the fiscal year for which it is to first apply, elect to participate in the State-County Property Tax Administration Program. For purposes of this section, an eligible county shall mean a county in which additional property tax revenue allocated to school entities would reduce the amount of General Fund moneys apportioned to school entities. However, eligibility shall be terminated when, in combination with resources in the Educational Revenue Augmentation Fund, additional property tax revenues allocated to school entities will not result in a reduction in the General Fund apportionments.

(b) (1) In each of the 1995–96, 1996–97, and 1997–98 fiscal years, an eligible county participating in the State-County Property Tax Administration Program may receive a loan for up to the amount listed in paragraph (3). The loan shall be repaid by June 30 of the fiscal year following the year in which the loan is made. However, at the discretion of the Director of Finance, the loan may be renewed once for an additional 12-month period at the request of the participating county board of supervisors.

(2) If an eligible county elects to participate in the State-County Property Tax Administration Program, it shall enter into a contractual agreement with the Department of Finance. At a minimum, the contractual agreement shall include the following:

(A) The loan amount, as determined by the Director of Finance.

(B) Repayment provisions, including the interception of Motor Vehicle License Fee Account moneys apportioned pursuant to Section 11005 to repay the General Fund.

(C) A listing of the proposed use of the additional resources including, but not limited to:

(i) Proposed new positions.

(ii) Increased automation costs.

(D) An agreement to provide to the Department of Finance, by March 31 of the fiscal year in which the loan is made, a report projecting the impact of the increased funding in the current and subsequent fiscal year.

(3) Upon request of the Department of Finance, the Controller shall provide a loan to the following counties for up to the amount specified by the Director of Finance, not to exceed the following amounts:

Jurisdiction	Amount
Alameda	$ 2,152,429
Alpine	3,124
Amador	80,865
Butte	381,956
Calaveras	109,897
Colusa	53,957
Contra Costa	2,022,088
Del Norte	36,203
El Dorado	302,795
Fresno	1,165,249
Glenn	59,197
Humboldt	210,806
Imperial	231,673
Inyo	100,080
Kern	1,211,318

Kings	138,653
Lake	117,376
Lassen	54,699
Los Angeles	13,451,670
Madera	212,991
Marin	790,490
Mariposa	46,476
Mendocino	160,435
Merced	298,004
Modoc	24,022
Mono	47,778
Monterey	795,819
Napa	366,020
Nevada	234,292
Orange	6,826,325
Placer	628,047
Plumas	80,606
Riverside	2,358,068
Sacramento	1,554,245
San Benito	90,408
San Bernardino	2,139,938
San Diego	5,413,943
San Francisco	1,013,332
San Joaquin	818,686
San Luis Obispo	736,288
San Mateo	2,220,001
Santa Barbara	926,817
Santa Clara	4,213,639
Santa Cruz	565,328
Shasta	342,399
Sierra	7,383
Siskiyou	91,164
Solano	469,207
Sonoma	1,035,049
Stanislaus	866,155
Sutter	147,436
Tehama	97,222
Trinity	24,913
Tulare	501,907
Tuolumne	126,067

Ventura	1,477,789
Yolo	278,309
Yuba	88,968

(4) The Department of Finance shall consider any or all of the following items in determining the extent to which a county has satisfied the terms and repaid the loan, pursuant to the contract, as offered under this part:

(A) County performance as indicated by the State Board of Equalization's sample survey required pursuant to Section 15640 of the Government Code.

(B) Performance measures adopted by the California Assessors' Association.

(C) Reduction of backlog of assessment appeals and Proposition 8 declines in value.

(D) County compliance with mandatory audits required by Section 469.

(E) Reduction of backlogs in new construction, changes in ownership, and supplemental roll.

(F) Other measures, as determined by the Director of Finance.

(5) The Director of Finance shall notify the Controller of any participating county that fails to comply with the terms of the agreement, including the repayment of the loan. When the Controller receives notice from the Director of Finance, the Controller shall make an apportionment to the General Fund on behalf of the participating county in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund to which the participating county is entitled at that time under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2, and shall thereupon reduce, by the amount of the payment, the subsequent allocation or allocations to which the county would otherwise be entitled under that chapter.

(c) Funds appropriated for purposes of this section shall be used to enhance the property tax administration system by providing supplemental resources. Amounts provided to any county as a loan pursuant to this section shall not be used to supplant the current level of funding. In order to participate in the State-County Property Tax Administration Program, a participating county shall maintain a base staffing, including contract staff, and total funding level in the county assessor's office, independent of the loan proceeds provided pursuant to this act, equal to the levels in the 1994–95 fiscal year exclusive of amounts provided to the Assessor's Office pursuant to Item 9100-102-001 of the Budget Act of 1994. However, in a county in which the 1994–95 funding level for the assessor's office was higher than the

1993–94 level, the 1993–94 fiscal year staffing and funding levels shall be considered the base year for purposes of this section.

(d) A participating county may establish a tracking system whereby a work or function number is assigned to each appraisal or administrative activity. That system should provide statistical data on the number of production units performed by each employee and the positive and negative change in assessed value attributable to the activities performed by each employee.

(e) Notwithstanding Section 95.3, no amount of funds provided to an eligible county pursuant to this section shall result in any deduction from those property tax administrative costs that are eligible for reimbursement pursuant to Section 95.3.

SEC. 5. Section 4703 of the Revenue and Taxation Code is amended to read:

4703. In each county that elects to adopt the procedure authorized by this chapter there is hereby created a tax losses reserve fund.

(a) The tax losses reserve fund shall be used exclusively, as hereinafter provided, to cover losses that may occur in the amount of tax liens as a result of special sales of tax-defaulted property. Whenever in any year the amount of the tax losses reserve fund has reached an amount equivalent to 1 percent of the total of all taxes and assessments levied on the secured roll for that year for participating entities in the county, the amounts hereinafter authorized to be credited to that fund may, for the remainder of that year, be credited to the county general fund.

(b) The auditor and treasurer shall keep apportioned tax resources accounts in a manner that the balance of amounts apportioned to funds on an accrual basis shall be known by both officers. In addition, the auditor shall keep secured taxes receivable accounts in a manner as to establish accountability for the amounts receivable on the secured tax rolls. Secured tax rolls, as used in this chapter, include delinquent rolls prescribed by Section 2627.

SEC. 6. Section 4703.2 of the Revenue and Taxation Code is amended to read:

4703.2. (a) In any county electing to follow the procedure authorized by this chapter, the board of supervisors may, by October 31 of any fiscal year, on the recommendation of the county auditor, adopt a resolution electing to be governed by this section rather than the provisions of Section 4703. Upon adoption, a copy of this resolution shall be filed with the county auditor, the county treasurer, and the county tax collector. Except as otherwise provided in this subdivision, this election shall remain in effect each fiscal year unless the board of supervisors adopts another resolution by October 31 of a fiscal year electing to be governed instead by Section 4703. For the 1993–94 fiscal year only, the election to be governed by this section rather than Section 4703 may be made no later than January 15, 1994. For the 1994–95 fiscal year only, an election to be governed by this

section rather than Section 4703 may be rescinded, upon the recommendation of the county auditor, by a resolution electing governance under Section 4703 that is adopted by the board of supervisors on any date during that fiscal year.

(b) In each county that elects to adopt the procedure authorized by this chapter and elects to be governed by this section rather than Section 4703 there shall be created a tax losses reserve fund.

(c) The tax losses reserve fund shall be used exclusively, as hereinafter provided, to cover losses that may occur in the amount of tax liens as a result of special sales of tax-defaulted property. In a county electing to be subject to this section rather than Section 4703, the tax losses reserve fund shall be maintained at not less than 25 percent of the total delinquent secured taxes and assessments for participating entities in the county as calculated at the end of the fiscal year. At the end of the fiscal year, amounts in the tax losses reserve fund that are in excess of 25 percent of the total delinquent secured taxes and assessments for participating entities in the county may be credited to the county general fund.

(d) The auditor and treasurer shall keep apportioned tax resources accounts in such a manner that the balance of amounts apportioned to funds on an accrual basis shall be known by both officers. In addition, the auditor shall keep secured taxes receivable accounts in such a manner as to establish accountability for the amounts receivable on the secured tax rolls. Secured tax rolls as used in this chapter include delinquent rolls prescribed by Section 2627.

SEC. 7. Section 1 of Chapter 241 of the Statutes of 1993 is amended to read:

Section 1. The sum of one hundred fifteen million one hundred sixty-two thousand dollars ($115,162,000) is hereby appropriated to the Controller for the payment of claims for reimbursement of state-mandated costs, according to the following schedule:

(a) One hundred fourteen million seven hundred twenty-nine thousand dollars ($114,729,000) from the General Fund, to be allocated as follows:

(1) One million eight hundred seventy-three thousand dollars ($1,873,000) for the reimbursement of claims of school districts and community colleges, as specified, to be allocated as follows:

(A) Eight hundred seventy-three thousand dollars ($873,000) for the payment of claims of school districts seeking reimbursable state-mandated costs incurred pursuant to Chapter 1607 of the Statutes of 1984, Chapter 78 of the Statutes of 1988, and Chapter 1457 of the Statutes of 1989 (School Crimes Statistics Reporting and Validation), for the 1993–94 fiscal year.

(B) One million dollars ($1,000,000) to cover deficiencies resulting from the enactment of Chapter 369 of the Statutes of 1992 in accordance with the following schedule:

One million dollars ($1,000,000) for the payment of claims of school districts seeking reimbursable state-mandated costs incurred

pursuant to Chapter 1659 of the Statutes of 1984 (Emergency Procedures) for the 1993–94 fiscal year.

(2) One hundred twelve million eight hundred fifty-six thousand dollars ($112,856,000) for the reimbursement of claims of other local governmental entities, as specified, to be allocated as follows:

(A) Five million three hundred twelve thousand dollars ($5,312,000) for the payment of claims of counties seeking reimbursable state-mandated costs incurred pursuant to Chapter 955 of the Statutes of 1989 and State Department of Health Services Protocols (Sudden Infant Death Syndrome), for the 1990–91 through 1993–94 fiscal years.

(B) Ninety-five million six hundred fifty-nine thousand dollars ($95,659,000) for the payment of claims of counties seeking reimbursable state-mandated costs incurred pursuant to Chapter 1747 of the Statutes of 1984; Chapter 1274 of the Statutes of 1985; and Division 9 of Title 2 of the California Code of Regulations (Handicapped and Disabled Students), for the 1986–87 through 1993–94 fiscal years.

(C) Nine million eight hundred eighty-five thousand dollars ($9,885,000) to provide reimbursement of costs incurred under state-mandated programs for local agencies for the period of July 1, 1992, through September 2, 1992, to reimburse for those mandated programs identified in Provision 4 of Item 8885-111-101 of Chapter 587 of the Statutes of 1992, which was not in operation for this time period.

(D) Two million dollars ($2,000,000) to restore funding for the 1992–93 fiscal year for the state-mandated program contained in Chapter 641 of the Statutes of 1986 (Open Meetings Act) for local agencies.

(b) Four hundred thirty-three thousand dollars ($433,000) from the Restitution Fund to provide reimbursement of costs incurred under state-mandated programs.

(c) All amounts appropriated in paragraph (1) of subdivision (a) are for the purposes of meeting the funding guarantee for education programs pursuant to Section 8 of Article XVI of the California Constitution.

(d) If any of the scheduled amounts in subdivisions (a) and (b) are insufficient to provide full reimbursement of costs, the Controller may, upon notifying the Director of Finance in writing, augment those deficient amounts from the unencumbered balance of any other scheduled amounts therein, except that unencumbered balances in any paragraph of subdivision (a) or (b) may be used to augment deficient amounts only in those items. No order may be issued pursuant to this provision unless written notification of necessity is provided to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee or his or her designee.

SEC. 8. The sum of eleven million three hundred fifty-nine thousand dollars ($11,359,000) is hereby appropriated from the General Fund to the Controller for the payment of claims for reimbursement of state-mandated local costs, according to the following schedule:

(a) The sum of five million five hundred ninety-nine thousand dollars ($5,599,000) for the payment of claims from local agencies seeking reimbursable state-mandated costs incurred pursuant to Chapter 1579 of the Statutes of 1988 and Chapter 768 of the Statutes of 1991 (Law Enforcement/Inmate AIDS Testing), for the period from September 30, 1988, to June 30, 1994.

(b) The sum of one million two hundred fifteen thousand dollars ($1,215,000) for the payment of claims from local agencies seeking reimbursable state-mandated costs incurred pursuant to Section 10500 of the Vehicle Code, of Chapter 337, Statutes of 1990 (Stolen Vehicle Notification), for the period from January 1, 1991, through June 30, 1996.

(c) The sum of two hundred fifteen thousand dollars ($215,000) for the payment of claims from local agencies seeking reimbursable state-mandated costs incurred pursuant to subdivision (a) of Section 427.12, and Section 427.13, of the Health and Safety Code, of Chapter 961, Statutes of 1992, (Pacific Beach Safety: Water Quality and Closures), for the period from January 1, 1993, through June 30, 1996.

(d) The sum of one hundred ninety-one thousand dollars ($191,000) for the payment of claims from local agencies seeking reimbursable state-mandated costs incurred pursuant to paragraphs (1) and (2) of subdivision (b) of Section 264.2 of the Penal Code, of Chapter 999, Statutes of 1991 and Chapter 224, Statutes of 1992, and Section 13701 of the Penal Code, of Chapter 999, Statutes of 1991 (Rape Victim Counseling Center Notices), for costs incurred for Chapter 999, Statutes of 1991, the period from January 1, 1992, through June 30, 1996, and for Chapter 224, Statutes of 1992, on or after January 1, 1993, through June 30, 1996.

(e) The sum of five hundred fifty-one thousand dollars ($551,000) for the payment of claims from local agencies seeking reimbursable state-mandated costs incurred pursuant to subdivision (g) of Section 853.6 of the Penal Code, of Chapter 1105, Statutes of 1992 (Misdemeanors: Booking and Fingerprinting), for costs incurred on or after January 1, 1993, through June 30, 1996.

(f) The sum of one million four hundred thirty-five thousand dollars ($1,435,000) for the payment of claims from local agencies seeking reimbursable state-mandated costs incurred pursuant to Sections 1000.93, 1000.94, and 1000.95 of the Penal Code, of Chapter 221, Statutes of 1993 (Domestic Violence Treatment Program Approvals), for costs incurred on or after January 1, 1994, through June 30, 1996.

(g) The sum of four hundred forty thousand dollars ($440,000) for payment of claims from school districts seeking reimbursable

state-mandated costs incurred pursuant to Section 39831.5 of the Education Code and paragraph (3) of subdivision (c) of Section 22112 of the Vehicle Code, of Chapter 624, Statutes of 1992 (School Bus Safety), for costs incurred September 14, 1992, through June 30, 1996.

(h) The sum of one million seven hundred thirteen thousand dollars ($1,713,000) for payment of claims from school districts seeking reimbursable state-mandated costs incurred pursuant to Sections 47605 and 47607 of the Education Code, of Chapter 781, Statutes of 1992 (Charter Schools), for costs incurred on or after January 1, 1993, through June 30, 1996.

(i) All amounts appropriated in subdivisions (g) and (h) of this section are for purposes of meeting the funding guarantee for education programs pursuant to Section 8 of Article XVI of the California Constitution.

SEC. 9. (a) The Controller shall prepare claiming instructions and accept claims from local agencies, school districts, and county offices of education seeking reimbursable state-mandated costs incurred pursuant to any of the following:

(1) Subdivisions (a), (b), and (c) of Section 10901 of the Health and Safety Code, Chapter 1603, Statutes of 1990 (Perinatal Services), for costs incurred on or after January 1, 1991, through June 30, 1996.

(2) Section 462 of the Health and Safety Code, Chapter 268, Statutes of 1991 (SIDS Contacts by Local Health Officers) for costs incurred from July 1, 1995, through June 30, 1996.

(3) Sections 324.2 and 324.3 of the Health and Safety Code, Chapter 1208, Statutes of 1976, Chapter 373, Statutes of 1991, and Chapter 759, Statutes of 1992 (Pupil Health Screenings) for costs incurred on or after July 1, 1992, through June 30, 1996.

(b) Payment of claims submitted to the Controller pursuant to this section shall not be made until funding for the state-mandated programs described in paragraphs (1), (2), and (3) of subdivision (a) is provided by a future appropriations act.

SEC. 10. (a) The sum of one million dollars ($1,000,000) is hereby appropriated from any moneys appropriated to the Department of Corrections from the General Fund, to be distributed in the amount of two hundred thousand dollars ($200,000) to each of the following cities that have contracts with the state pursuant to Article 1.5 (commencing with Section 2910) of Chapter 7 of Title 1 of Part 3 of the Penal Code:

(1) Adelanto.
(2) Folsom.
(3) Delano.
(4) Shafter.
(5) Taft.

(b) The appropriation specified in subdivision (a) shall constitute a loan that each city shall repay at the rate of one hundred thousand dollars ($100,000) per year, commencing on July 1, 1997, with interest

paid at the rate earned on money in the Pooled Money Investment Account. However, if the cities specified in subdivision (a) continue to prevail on appeal in the matter of the City of Adelanto v. State of California, Superior Court No. 533586, then the loans shall be offset against the judgment in favor of the cities.

SEC. 11. The sum of one million eight hundred thousand six hundred eighty-three dollars and thirty-eight cents ($1,800,683.38) is hereby appropriated to the executive officer of the State Board of Control for the payment of claims accepted by the State Board of Control in accordance with the following schedule:

Total for Fund: Item 5160–001–001 (A), Budget Act 1995	$1,000.00
Total for Fund: Item 5160–101–001 (A), Budget Act 1995	$320.00
Total for Fund: Bank and Corporation Tax Fund	$31,914.65
Total for Fund: Compensation Insurance Fund	$290.00
Total for Fund: Disability Fund	$1,709.86
Total for Fund: Employment Development Department Contingent Fund	$978.98
Total for Fund: Estate Tax Fund	$1,517.26
Total for Fund: Federal Trust Fund	$546.85
Total for Fund: General Fund	$105,635.22
Total for Fund: Health Care Deposit Fund	$1,978.86
Total for Fund: Inmates Welfare Fund	$2,005.73
Total for Fund: Item 0250–001–001 (B), Budget Act 1995	$211.07
Total for Fund: Item 0250–001–001 (C), Budget Act 1995	$27,599.73
Total for Fund: Item 0820–001–001 (E), Budget Act 1995	$59.43
Total for Fund: Item 0820–001–001 (G), Budget Act 1995	$1,040.73
Total for Fund: Item 0840–001–001 (A), Budget Act 1995	$847.09
Total for Fund: Item 0860–001–001 (A), Budget Act 1995	$10,045.94

Total for Fund: Item 0860–001–001 (B), Budget Act 1995	$47.45
Total for Fund: Item 0860–001–0019 (A), Budget Act 1995	$285.00
Total for Fund: Item 0890–001–001 (A), Budget Act 1995	$105.00
Total for Fund: Item 0890–001–001 (B), Budget Act 1995	$70.00
Total for Fund: Item 1100–001–001 (A), Budget Act 1995	$18,900.00
Total for Fund: Item 1390–001–758 (A), Budget Act 1995	$661.80
Total for Fund: Item 1480–001–763 (A), Budget Act 1995	$363.40
Total for Fund: Item 1600–001–780, Budget Act 1995	$74,650.00
Total for Fund: Item 1655–001–702 (D), Budget Act 1995	$137.00
Total for Fund: Item 1700–001–001 (A), Budget Act 1995	$80.30
Total for Fund: Item 1710–001–001 (A), Budget Act 1995	$14,975.04
Total for Fund: Item 1730–001–001 (A), Budget Act 1995	$5,595.57
Total for Fund: Item 1760–001–666 (A), Budget Act 1995	$701.09
Total for Fund: Item 1760–001–666 (B), Budget Act 1995	$27,955.46
Total for Fund: Item 1880–001–001 (A), Budget Act 1995	$5,792.97
Total for Fund: Item 1900–001–830 (A), Budget Act 1995	$217.17
Total for Fund: Item 1900–001–830 (C), Budget Act 1995	$728.05
Total for Fund: Item 1920–001–835 (A), Budget Act 1995	$61.07
Total for Fund: Item 1970–011–001 (A), Budget Act 1995	$13,956.90
Total for Fund: Item 2100–001–001 (C), Budget Act 1995	$6,346.00

Total for Fund: Item 2660–001–042(B), Budget Act 1995	$86,528.11
Total for Fund: Item 2720–001–044(A), Budget Act 1995	$31,580.04
Total for Fund: Item 2740–001–044(A), Budget Act 1995	$15,288.23
Total for Fund: Item 2920–001–001(A), Budget Act 1995	$375.00
Total for Fund: Item 3480–001–001(A), Budget Act 1995	$274.00
Total for Fund: Item 3480–001–001(F), Budget Act 1995	$99,183.49
Total for Fund: Item 3480–001–133	$2,177.66
Total for Fund: Item 3540–001–001(A), Budget Act 1995	$2,659.98
Total for Fund: Item 3540–001–001(B), Budget Act 1995	$1,890.00
Total for Fund: Item 3600–001–200(A), Budget Act 1995	$1,375.00
Total for Fund: Item 3600–001–200(C), Budget Act 1995	$4,206.79
Total for Fund: Item 3680–101–516(B), Budget Act 1995	$12,400.00
Total for Fund: Item 3790–001–001(A), Budget Act 1995	$495.98
Total for Fund: Item 3790–001–001(B), Budget Act 1995	$6,363.68
Total for Fund: Item 3860–001–001(A), Budget Act 1995	$152.97
Total for Fund: Item 3860–001–001(C), Budget Act 1995	$6,197.66
Total for Fund: Item 3860–001–001(E), Budget Act 1995	$196.62
Total for Fund: Item 3900–001–044(A), Budget Act 1995	$3,875.00
Total for Fund: Item 3910–001–837(A), Budget Act 1995	$5,811.00
Total for Fund: Item 3910–001–387(C), Budget Act 1995	$20,285.05

Total for Fund: Item 3960–001–014(A), Budget Act 1995	$6,686.44
Total for Fund: Item 4140–001–001(D), Budget Act 1995	$7,548.00
Total for Fund: Item 4260–001–001(1), Budget Act 1995	$285.30
Total for Fund: Item 4260–001–001(2), Budget Act 1995	$9,575.67
Total for Fund: Item 4300–001–001(A), Budget Act 1995	$5,696.07
Total for Fund: Item 4300–001–001(B), Budget Act 1995	$3,888.14
Total for Fund: Item 4300–003–001(A), Budget Act 1995	$15,296.26
Total for Fund: Item 4300–101–001(A), Budget Act 1995	$758.95
Total for Fund: Item 4310–003–101(A), Budget Act 1995	$259.00
Total for Fund: Item 4440–001–001(A), Budget Act 1995	$3,619.62
Total for Fund: Item 4440–011–001(A), Budget Act 1995	$5,860.26
Total for Fund: Item 5100–001–588, Budget Act 1995	$652.00
Total for Fund: Item 5100–001–870(A), Budget Act 1995	$5,260.39
Total for Fund: Item 5100–001–870(B), Budget Act 1995	$5,132.45
Total for Fund: Item 5160–001–001(A), Budget Act 1995	$8,349.84
Total for Fund: Item 5160–101–001(B), Budget Act 1995	$905.00
Total for Fund: Item 5180–001–001(A), Budget Act 1995	$834.00
Total for Fund: Item 5180–001–001(B), Budget Act 1995	$1,178.01
Total for Fund: Item 5180–001–001(C), Budget Act 1995	$125.00
Total for Fund: Item 5180–001–001(D), Budget Act 1995	$500.00

Total for Fund: Item 5180–001–001 (F), Budget Act 1995	$420.00
Total for Fund: Item 5240–001–001 (A), Budget Act 1995	$196,095.25
Total for Fund: Item 5240–001–001 (B), Budget Act 1995	$350.00
Total for Fund: Item 5450–001–001, Budget Act 1995	$1,771.09
Total for Fund: Item 5460–001–001 (A), Budget Act 1995	$4,007.38
Total for Fund: Item 5460–001–001 (B), Budget Act 1995	$309.11
Total for Fund: Item 6110–001–001 (B), Budget Act 1995	$57,435.93
Total for Fund: Item 6110–001–001 (D), Budget Act 1995	$28,163.00
Total for Fund: Item 6110–005–001 (A), Budget Act 1995	$119.34
Total for Fund: Item 6110–005–001 (A3), Budget Act 1995	$137.00
Total for Fund: Item 6610–001–001 (A), Budget Act 1995	$225,041.31
Total for Fund: Item 6610–301–782 Budget Act 1995	$384,528.00
Total for Fund: Item 8350–001–001 (3), Budget Act 1995	$10,308.13
Total for Fund: Item 8570–001–001 (A), Budget Act 1995	$4,521.86
Total for Fund: Item 8570–001–001 (B), Budget Act 1995	$312.33
Total for Fund: Item 8570–001–001 (E), Budget Act 1995	$337.91
Total for Fund: Item 8660–001–412 (A), Budget Act 1995	$4,084.59
Total for Fund: Item 8660–001–412 (B), Budget Act 1995	$262.00
Total for Fund: Litigation Deposit Fund	$41.76
Total for Fund: Local Jurisdiction Energy Assistance PVEA 429 Fund	$17,448.70

Total for Fund: Motor Vehicle Account, Budget Act 1995	$144.00
Total for Fund: Personal Income Tax Fund	$1,607.29
Total for Fund: Petroleum Violation Escrow Fund	$81.58
Total for Fund: Public Employees Health Care Fund	$155.48
Total for Fund: Public Employees Retirement Fund	$6,415.59
Total for Fund: Retail Sales Tax Fund	$19,534.37
Total for Fund: Senate Operating Fund	$258.85
Total for Fund: Special Deposit Fund	$15.00
Total for Fund: State Lottery Fund	$902.00
Total for Fund: State Teachers' Retirement Fund	$1,168.60
Total for Fund: Tax Relief and Refund Account	$66,917.47
Total for Fund: Transportation Fund, State Highway Account	$313.06
Total for Fund: Unclaimed Property Fund	$17,312.26
Total for Fund: Unemployment Compensation Disability Fund	$5,141.00
Total for Fund: Unemployment Fund	$1,894.00
Total for Fund: Welfare Advance Fund	$70.81

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to settle local government claims against the state for mandated costs and other claims against the state, and to end hardship to claimants, it is necessary for this act to take effect immediately.

CHAPTER 915

An act to amend Section 5352 of, and to add and repeal Sections 1080, 3526, 4124, and 5005.1 of, the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. The Legislature finds and declares that:

(a) Public Law 103-305, enacted August 23, 1994, amends Title 49 of the United States Code, effective January 1, 1995, and is intended to generally preempt the states from regulating any matter related to the price, route, or service of motor carriers of property and air carriers transporting property by motor vehicle.

(b) Public Law 103-305 does not affect the states' authority to license and regulate the safety and financial responsibility of these carriers, including integrated intermodal small package carriers, nor does it attempt to preempt the states from regulating any aspect of the transportation of household goods, as defined in federal law.

(c) The Public Utilities Code currently authorizes the Public Utilities Commission to regulate, among other things, the rates, routes, service, financial responsibility, and safety of various classes of for-hire property carriers.

(d) Public Law 103-305 has become subject to legal challenge.

(e) With regard to all motor carriage covered by the federal law, Public Law 103-305, if not overturned, would preempt the Public Utilities Commission from: requiring the filing of tariffs or contracts; prescribing rates; limiting the types of commodities that carriers may transport; prescribing terms of service between shippers and carriers; granting most, but not all, antitrust immunity for collectively set rates; specifying routes or territory that may be served; imposing residency requirements; authorizing the acquisition and control of carriers, other than to ensure compliance with safety and financial responsibility requirements; imposing entry limits not related to safety or financial responsibility; terminating operating authority merely for nonuse; requiring the filing of subhaul or collect-on-delivery bonds; regulating the relationship between prime carriers and subhaulers except to restrict prime carriers from engaging unlicensed subhaulers; or requiring the maintenance, production, or inspection of documents not relevant to the commission's remaining authority.

(f) The citizens of California benefit from the regulation of the financial responsibility and safety of for-hire property carriers.

(g) The continued and uninterrupted regulation of the safety and financial responsibility of for-hire property carriers, in conformance with federal law, is in the public interest.

(h) It is the purpose of this act to permit the Public Utilities Commission to continue to enforce existing laws to the extent permitted under federal law, only until new legislation in response to the recommendations of the Governor's Task Force created by Executive Order W-115-95 becomes effective.

(i) It is also the purpose of this act to ensure: that for-hire property carriers, including integrated intermodal small package carriers, must still obtain a registration, certificate, or permit from the commission in order to operate, and must display on their vehicles the identifying symbol prescribed by the commission; that the registration, certificate, or permit may only be obtained upon proof of compliance with safety and financial responsibility requirements; that the commission, pursuant to existing state statutes, may suspend or revoke the registration, certificate or permit, or impose fines, for failure to comply with safety and financial responsibility requirements of for failure to pay fees; that all remedies and penalties under existing statutes, including, but not limited to, injunctions and criminal sanctions, remain available to ensure compliance with safety and financial responsibility requirements.

SEC. 2. Section 1080 is added to the Public Utilities Code, to read:

1080. If any provision contained in the Public Utilities Act (Part 1 (commencing with Section 201) of Division 1) applicable to highway common carriers or cement carriers, or the application thereof to any person or circumstance, is invalid for any reason, including federal preemption, the remainder of the Public Utilities Act, or the application of these provisions to other persons or circumstances, shall not be affected thereby.

This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3. Section 3526 is added to the Public Utilities Code, to read:

3526. If any provision contained in this chapter, or the application thereof to any person or circumstance, is invalid for any reason, including federal preemption, the remainder of the chapter, or the application of these provisions to other persons or circumstances, shall not be affected thereby.

This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 4. Section 4124 is added to the Public Utilities Code, to read:

4124. If any provision contained in this chapter, or the application thereof to any person or circumstance, is invalid for any reason, including federal preemption, the remainder of the chapter, or the application of these provisions to other persons or circumstances, shall not be affected by that invalidity.

This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 5. Section 5005.1 is added to the Public Utilities Code, to read:

5005.1. (a) All moneys paid into the Transportation Rate Fund by highway common carriers, cement carriers, and highway permit carriers, except for moneys paid by household goods carriers, shall be used by the commission solely for the purposes of: regulating the safety and financial responsibility of carriers; licensing those carriers subject to Section 601 of Public Law 103-305; and establishing and implementing the state standard transportation practices specifically permitted by Section 601 of Public Law 103-305. This dedication of fees shall be effective for all fees paid after December 31, 1994, except it shall not include quarterly fees based on revenues from transportation operations before January 1, 1995.

(b) Except as provided in subdivision (c), this section shall remain operative only so long as Section 601 of Public Law 103-305 is operative, and shall become inoperative on the date when Section 601 becomes inoperative or is repealed.

This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 6. Section 5352 of the Public Utilities Code is amended to read:

5352. The use of the public highways for the transportation of passengers for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon the highways; to secure to the people adequate and dependable transportation by carriers operating upon the highways; to secure full and unrestricted flow of traffic by motor carriers over the highways which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to accident indemnity so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public; and to promote carrier and public safety through its safety enforcement regulations.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

An emergency exists for the immediate effectiveness of this act in that the federal government in Public Law 103-305 has preempted certain statutory requirements enforced by the Public Utilities Commission, and it is urgent to remove any ambiguity regarding the

commission's authority to enforce safety and financial responsibility requirements in order to protect the people of this state.

CHAPTER 916

An act to amend Section 4497.38 of the Penal Code, to amend Section 2105 of, and to repeal Section 2105.1 of, the Streets and Highways Code, to amend Sections 912, 16990, 17000.5, 17000.6, 17001.5, and 17608.05 of, and to add Sections 912.5 and 17001.51 to, the Welfare and Institutions Code, relating to local government assistance, and making an appropriation therefor.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 4497.38 of the Penal Code is amended to read:

4497.38. (a) Awards shall be made only if county matching funds of 25 percent are provided except as specified in subdivision (b).

(b) (1) A county or a consortium of counties may request the Director of the Department of the Youth Authority for a deferral of payment of the required matching funds for the construction of a juvenile detention facility. This request shall be approved if the county or consortium of counties meet all of the following criteria:

(A) The county or consortium of counties has plans for the construction of the facility approved by the Department of the Youth Authority.

(B) The facility to be built is located in Humboldt County.

(C) The county or consortium of counties submits to and receives approval by the Department of the Youth Authority, a plan and schedule for payment of the required match.

(2) Contribution of the county or consortium of counties matching requirement shall commence no later than three years from the date of occupation of any facility financed under this chapter.

(3) Under no circumstances shall the county match for any county juvenile project be less than 25 percent.

SEC. 2. Section 2105 of the Streets and Highways Code is amended to read:

2105. In addition to the apportionments prescribed by Sections 2104, 2106, and 2107, from the revenues derived from a per gallon tax imposed pursuant to Section 7351 of the Revenue and Taxation Code, and a per gallon tax imposed pursuant to Section 8651 of that code, the following apportionments shall be made:

(a) A sum equal to the net revenue from a tax of 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 7351 of the Revenue and Taxation Code, and 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 8651 of that code, shall be apportioned among the counties, including a city and county.

The amount of apportionment to each county, including a city and county, during a fiscal year shall be calculated as follows:

(1) One million dollars ($1,000,000) for apportionment to all counties, including a city and county, in proportion to each county's receipts during the prior fiscal year under Sections 2104 and 2106.

(2) One million dollars ($1,000,000) for apportionment to all counties, including a city and county, as follows:

(A) Seventy-five percent in the proportion that the number of fee-paid and exempt vehicles which are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(B) Twenty-five percent in the proportion that the number of miles of maintained county roads in the county bears to the miles of maintained county roads in the state.

(3) For each county, determine its factor which is the higher amount calculated pursuant to paragraph (1) or (2) divided by the sum of the higher amounts for all of the counties.

(4) The amount to be apportioned to each county is equal to its factor multiplied by the amount available for apportionment.

(b) A sum equal to the net revenue from a tax of 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 7351 of the Revenue and Taxation Code, and 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 8651 of that code, shall be apportioned to cities, including a city and county, in the proportion that the total population of the city bears to the total population of all the cities in the state.

SEC. 3. Section 2105.1 of the Streets and Highways Code is repealed.

SEC. 4. Section 912 of the Welfare and Institutions Code is amended to read:

912. Effective January 1, 1996, for each person committed to the Department of the Youth Authority, the county from which he or she is committed shall pay the state one hundred fifty dollars ($150) per month for the time that person remains in any institution under the direct supervision of the Department of the Youth Authority, or in any institution, boarding home, foster home, or other private or public institution in which he or she is placed by the Department of the Youth Authority, on parole or otherwise, and cared for and supported at the expense of the Department of the Youth Authority. This section applies to any person committed to the Department of the Youth Authority by a juvenile court, including persons committed to the Department of the Youth Authority prior to

January 1, 1996, who on or after January 1, 1996, remain in or return to the facilities described in this section.

The Department of the Youth Authority shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section, which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

SEC. 5. Section 912.5 is added to the Welfare and Institutions Code, to read:

912.5. (a) For each person committed to the Department of the Youth Authority by a juvenile court on or after January 1, 1996, the county from which he or she is committed shall pay the state the following rate:

(1) If the offense on which the commitment is based is listed in Section 4955 of Title 15 of the California Code of Regulations, the rate is 50 percent of the per capita institutional cost of the Department of the Youth Authority.

(2) If the offense on which the commitment is based is listed in Section 4956 of Title 15 of the California Code of Regulations, the rate is 75 percent of the per capita institutional cost of the Department of the Youth Authority.

(3) If the offense on which the commitment is based is listed in Section 4957 of Title 15 of the California Code of Regulations, the rate is 100 percent of the per capita institutional cost of the Department of the Youth Authority.

(b) For purposes of this section, "the offense on which the commitment is based" means any offense that has been sustained by the juvenile court and that is included in the determination of the maximum term of imprisonment by the juvenile court pursuant to Section 731.

(c) For purposes of this section, the charge against the county shall not apply to periods of confinement that are solely pursuant to a revocation of parole by the Youthful Offender Parole Board.

(d) The charge against the county prescribed by this section shall be in lieu of the charge prescribed by Section 912 and not in addition to that charge.

(e) The Department of the Youth Authority shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section, which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

(f) The Department of the Youth Authority shall adopt emergency regulations for implementation of this section.

SEC. 6. Section 16990 of the Welfare and Institutions Code is amended to read:

16990. (a) (1) Any county receiving an allocation pursuant to this chapter and Chapter 4 (commencing with Section 16930) shall, at a minimum, maintain a level of financial support of county funds

for health services at least equal to the total of the amounts specified in this subdivision. The amounts specified in paragraph (1) shall be adjusted on July 1 of each year equal to the growth in the sales tax and vehicle license fees allocated to the trust fund accounts and the county general fund pursuant to Chapter 6 (commencing with Section 17600) of Part 5.

Each of the following counties shall maintain a realignment financial maintenance of effort according to the following schedule:

Jurisdiction	Amount
Alameda	$ 62,950,138
Alpine	150,781
Amador	1,702,152
Butte	8,378,036
Calaveras	1,286,374
Colusa	1,362,787
Contra Costa	31,188,063
Del Norte	1,305,412
El Dorado	5,626,036
Fresno	32,555,212
Glenn	1,368,045
Humboldt	8,995,114
Imperial	8,526,220
Inyo	2,320,718
Kern	23,025,845
Kings	4,310,952
Lake	1,767,837
Lassen	1,555,628
Los Angeles	510,082,064
Madera	3,523,697
Marin	11,349,537
Mariposa	766,751
Mendocino	2,782,024
Merced	4,711,969
Modoc	939,453
Mono	1,673,165
Monterey	11,816,218
Napa	4,751,422
Nevada	2,669,976
Orange	66,846,735
Placer	3,009,967
Plumas	1,143,704

Riverside	33,598,282
Sacramento	33,012,993
San Benito	1,601,614
San Bernardino	27,576,793
San Diego	49,373,333
San Francisco	106,622,954
San Joaquin	12,646,288
San Luis Obispo	5,888,487
San Mateo	21,788,027
Santa Barbara	12,659,559
Santa Clara	47,316,403
Santa Cruz	8,373,710
Shasta	6,521,122
Sierra	327,339
Siskiyou	2,401,825
Solano	8,942,768
Sonoma	16,146,306
Stanislaus	13,403,954
Sutter	4,872,252
Tehama	3,257,915
Trinity	1,599,409
Tulare	8,593,714
Tuolumne	2,525,076
Ventura	17,042,243
Yolo	4,396,875
Yuba	3,083,423
Total	$1,278,014,696

(2) A county may, upon notifying the department of the transfers authorized by this paragraph, reduce the level of financial maintenance of effort required of the county by paragraph (1) by the amount of the funds transferred from the Health Account pursuant to Section 17600.20.

(b) For purposes of this section, if a county desires to use any of its allocation pursuant to this chapter or Chapter 4 (commencing with Section 16930) for programs and costs not reported as part of the plan and budget required by Section 16800, the county, as a condition of using its allocation for these purposes, must maintain an amount of county funding for those programs and costs at least equal to the 1988–89 fiscal year levels.

(c) Moneys received by a county under this chapter shall be accounted for as revenue in the plan and budget which is required

pursuant to Section 16800 and shall not be used as county matching funds for any other program requiring a county match.

(d) If a county fails to maintain financial maintenance of effort at least equal to the total of the amounts specified in paragraph (1) of subdivision (a), the department shall recover funds allocated to the county under this part sufficient to bring the county into compliance with the financial maintenance of effort provisions. Funds shall be recovered proportionately from the Hospital Services Account, the Physician Services Account, and the Unallocated Account.

(e) The participation fee specified in Section 16809.3 shall not be included in determining a county's compliance with the maintenance of effort provisions of this section.

(f) For the purposes of determining the level of financial support required for the 1991–92 fiscal year, the amounts specified in paragraph (1) of subdivision (a) shall be reduced to reflect shortfalls in revenue to local health and welfare trust fund health accounts due to shortfalls in receipts of sales tax revenue and county deposits required pursuant to subdivision (b) of Section 17608.10, compared to the amounts of these funds originally anticipated, as determined by the Director of Health Services.

(g) For the purposes of determining the level of financial support required in the 1992–93 fiscal year, the amounts specified in paragraph (1) of subdivision (a) shall be reduced by 7 percent.

(h) For the purposes of determining the level of financial support required in the 1993–94 fiscal year and subsequent fiscal years, the amounts specified in paragraph (1) of subdivision (a) shall be reduced to reflect shortfalls in revenue to local health and welfare trust fund health accounts due to shortfalls in receipts of sales tax revenue and county deposits required pursuant to subdivision (b) of Section 17608.10, compared to the amounts of these funds originally anticipated for the 1991–92 fiscal year, as determined by the Director of Health Services.

SEC. 7. Section 17000.5 of the Welfare and Institutions Code is amended to read:

17000.5. (a) The board of supervisors in any county may adopt a general assistance standard of aid, including the value of in-kind aid which includes, but is not limited to, the monthly actuarial value of up to forty dollars ($40) per month of medical care, that is 62 percent of a guideline that is equal to the 1991 federal official poverty line and may annually adjust that guideline in an amount equal to any adjustment provided under Chapter 2 (commencing with Section 11200) of Part 3 for establishing a maximum aid level in the county. This subdivision is not intended to either limit or expand the extent of the duty of counties to provide health care.

(b) The adoption of a standard of aid pursuant to this section shall constitute a sufficient standard of aid.

(c) For purposes of this section, "federal official poverty line" means the same as it is defined in subsection (2) of Section 9902 of Title 42 of the United States Code.

(d) For purposes of this section, "any adjustment" includes, and, prior to the addition of this subdivision, included statutory increases, decreases, or reductions in the maximum aid level in the county under the Aid to Families with Dependent Children program contained in Chapter 2 (commencing with Section 11200) of Part 3.

(e) In the event that adjustments pursuant to Section 11450.02 are not made, the amounts established pursuant to subdivision (a) may be adjusted to reflect the relative cost of housing in various counties as follows:

(1) Reduced by 1.5 percent in the Counties of Alameda, Contra Costa, Los Angeles, San Diego, Santa Barbara, Sonoma, and Ventura.

(2) Reduced by 3 percent in the Counties of San Luis Obispo, Nevada, Sierra, Monterey, Napa, Solano, Riverside, San Bernardino, Alpine, Amador, Calaveras, Inyo, Kern, Mariposa, Mono, and Tuolumne.

(3) Reduced by 4.5 percent in the Counties of Stanislaus, Imperial, El Dorado, Placer, Sacramento, Yolo, Humboldt, San Benito, Del Norte, Fresno, Lake, Mendocino, Shasta, Trinity, Butte, Merced, Tulare, San Joaquin, Lassen, Modoc, Plumas, Siskiyou, Tehama, Kings, Madera, Colusa, Glenn, Sutter, and Yuba.

SEC. 8. Section 17000.6 of the Welfare and Institutions Code is amended to read:

17000.6. (a) The board of supervisors of any county may adopt a standard of aid below the level established in Section 17000.5 if the Commission on State Mandates makes a finding that meeting the standards in Section 17000.5 would result in a significant financial distress to the county. When the commission makes a finding of significant financial distress concerning a county, the board of supervisors may establish a level of aid which is not less than 40 percent of the 1991 federal official poverty level, which may be further reduced pursuant to Section 17001.5 for shared housing. The commission shall not make a finding of significant financial distress unless the county has made a compelling case that, absent the finding, basic county services, including public safety, cannot be maintained.

(b) Upon receipt of a written application from a county board of supervisors, the commission may make a finding of financial distress for a period of up to 36 months pursuant to regulations that the commission shall adopt, that are necessary to implement this section. The period of reduction may be renewed annually by the commission upon reapplication by the county. Any county that filed an application prior to July 1, 1995, that was approved by the commission on or before August 31, 1995, shall be deemed to have had that application approved for a period of 36 months.

(c) As part of the decision making process, the commission shall notice and hold a public hearing on the county's application or reapplication in the county of application. The commission shall provide a 30-day notice of the hearing in the county of application or reapplication. The commission shall notify the applicant county of its preliminary decision within 60 days after receiving the application and final decision within 90 days after receiving the application. If a county files an application while another county's application is pending, the commission may extend both the preliminary decision period up to 120 days and the final decision period up to 150 days from the date of the application.

(d) This section shall not be construed to eliminate the requirement that a county provide aid pursuant to Section 17000.

(e) Any standard of aid adopted pursuant to this section shall constitute a sufficient standard of aid.

(f) The commission may adopt emergency regulations for the implementation of this section.

SEC. 9. Section 17001.5 of the Welfare and Institutions Code is amended to read:

17001.5. (a) Notwithstanding any other provision of law, including, but not limited to, Section 17000.5, the board of supervisors of each county, or the agency authorized by the county charter, may do any of the following:

(1) (A) Adopt residency requirements for purposes of determining a persons' eligibility for general assistance. Any residence requirement under this paragraph shall not exceed 15 days.

(B) Nothing in this paragraph shall be construed to authorize the adoption of a requirement that an applicant or recipient have an address or to require a homeless person to acquire an address.

(2) (A) Establish a standard of general assistance for applicants and recipients who share housing with one or more unrelated persons or with one or more persons who are not legally responsible for the applicant or recipient. The standard of general assistance aid established pursuant to Section 17000.5 for a single adult applicant or recipient may be reduced pursuant to this paragraph by not more than the following percentages, as appropriate:

(i) Fifteen percent if the applicant or recipient shares housing with one other person described in this subparagraph.

(ii) Twenty percent if the applicant or recipient shares housing with two other persons described in this subparagraph.

(iii) Twenty-five percent if the applicant or recipient shares housing with three or more other persons described in this paragraph.

(B) Any standard of aid adopted pursuant to this paragraph shall constitute a sufficient standard of aid for any recipient who shares housing.

(C) Counties with shared housing reductions larger than the amounts specified in subparagraph (A) as of August 19, 1992, may continue to apply those adjustments.

(3) Discontinue aid under this part for a period of not more than 180 days with respect to any recipient who is employable and has received aid under this part for three months if the recipient engages in any of the following conduct:

(A) Fails, or refuses, without good cause, to participate in a qualified job training program, participation of which is a condition of receipt of assistance.

(B) After completion of a job training program, fails, or refuses, without good cause, to accept an offer of appropriate employment.

(C) Persistently fails, or refuses, without good cause, to cooperate with the county in its efforts to do any of the following:

(i) Enroll the recipient in a job training program.

(ii) After completion of a job training program, locate and secure appropriate employment for the recipient.

(D) For purposes of this paragraph, lack of good cause may be demonstrated by a showing of any of the following:

(i) The willful failure, or refusal, of the recipient to participate in a job training program, accept appropriate employment, or cooperate in enrolling in a training program or locating employment.

(ii) Not less than three separate acts of negligent failure of the recipient to engage in any of the activities described in clause (i).

(4) Prohibit an employable individual from receiving aid under this part for more than three months in any 12-month period, whether or not the months are consecutive. This paragraph shall apply to aid received on or after the effective date of this paragraph. This paragraph shall apply only to those individuals who have been offered an opportunity to attend job skills or job training sessions.

(5) Notwithstanding paragraph (3), discontinue aid to, or sanction, recipients for failure or refusal without good cause to follow program requirements. For purposes of this subdivision, lack of good cause may be demonstrated by a showing of either (A) willful failure or refusal of the recipient to follow program requirements, or (B) not less than three separate acts of negligent failure of the recipient to follow program requirements.

(b) (1) The Legislative Analyst shall conduct an evaluation of the impact of this section on general assistance recipients and applicants.

(2) The evaluation required by paragraph (1) shall include, but need not be limited to, all of the following:

(A) The impact on the extent of homelessness among applicants and recipients of general assistance.

(B) The rate at which recipients of general assistance are sanctioned by county welfare departments.

(C) The impact of the 15-day residency requirement on applicants or recipients of general assistance, including how often the requirement is invoked.

(3) The Legislative Analyst shall, in the conduct of the study required by this section, consult with the State Department of Social Services, the County Welfare Directors Association, and organizations that advocate on behalf of recipients of general assistance.

(c) A county may provide aid pursuant to Section 17000.5 either by cash assistance, in-kind aid, a two-party payment, voucher payment, or check drawn to the order of a third-party provider of services to the recipient. Nothing shall restrict a county from providing more than one method of aid to an individual recipient.

(d) Paragraphs (1), (3), and (5) of subdivision (a) and all of subdivision (b) of this section shall remain in effect until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1997, deletes or extends that date.

SEC. 10. Section 17001.51 is added to the Welfare and Institutions Code, to read:

17001.51. (a) A county may require adult applicants and recipients of benefits under the general assistance program to undergo screening for substance abuse when it is determined by the county that there is reasonable suspicion to believe that an individual is dependent upon illegal drugs or alcohol. The county shall maintain documentation of this finding.

(b) A county may require as a condition of aid reasonable participation in substance abuse or alcohol treatment programs for persons screened pursuant to subdivision (a) and professionally evaluated to be in need of treatment, if the services are actually available at no charge to the applicant or recipient.

SEC. 11. Section 17608.05 of the Welfare and Institutions Code is amended to read:

17608.05. (a) As a condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's local health and welfare trust fund mental health account, the county or city shall deposit each month local matching funds in accordance with a schedule developed by the State Department of Mental Health based on county or city standard matching obligations for the 1990–91 fiscal year for mental health programs.

(b) A county, city or city and county may limit its deposit of matching funds to the amount necessary to meet minimum federal maintenance of effort requirements, as calculated by the State Department of Mental Health, subject to the approval of the Department of Finance. However, the amount of the reduction permitted by the limitation provided for by this subdivision shall not exceed twenty-five million dollars ($25,000,000) per fiscal year on a statewide basis.

(c) Any county, city, or city and county that elects not to apply maintenance of effort funds for community mental health programs shall not use the loss of these expenditures from local mental health

programs for realignment purposes, including any calculation for poverty-population shortfall for clause (iv) of subparagraph (B) of paragraph (2) of subdivision (c) of Section 17606.05.

SEC. 12. Sections 1 to 11, inclusive, of this act shall not become operative unless Assembly Bill 1143 is enacted and becomes operative on or before January 1, 1996.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 917

An act to amend Sections 94100, 94110, 94140, 94153, 94155, and 94344 of, to add Section 94102 to, and to repeal Article 17 (commencing with Section 69905) of Chapter 2 of Part 42 of, the Education Code, relating to postsecondary education.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Article 17 (commencing with Section 69905) of Chapter 2 of Part 42 of the Education Code is repealed.

SEC. 2. Section 94100 of the Education Code is amended to read:

94100. It is the purpose of this chapter to give this and future generations of youth the fullest opportunity to learn and develop their intellectual and mental capacities by providing private institutions of higher education within the state an additional means by which to expand, enlarge, and establish dormitory, academic, and related facilities, to finance such facilities, and to refinance existing facilities, and by providing private and public institutions of higher education within the state an additional means to assist students in financing their costs of attendance.

SEC. 3. Section 94102 is added to the Education Code, to read:

94102. All assets and obligations of the California Student Loan Authority, as of the effective date of the act that enacts this section during the 1995–96 Regular Session, are hereby transferred to, and

assumed by, the California Educational Facilities Authority. All of those assets shall be used solely for student loan purposes.

SEC. 4. Section 94110 of the Education Code is amended to read:

94110. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) "Authority" means the California Educational Facilities Authority created by this chapter or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the power conferred upon the authority by this chapter is given by law.

(b) "Bond" means bonds, notes, debentures, or other securities of the authority issued pursuant to this chapter.

(c) "Cost," as applied to a project or portion thereof financed under this chapter, embraces all or any part of the cost of construction and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to, during, and for a period after completion of, the construction as determined by the authority, provisions for working capital, reserves for principal and interest and for extension, enlargements, additions, replacements, renovations and improvements, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates, administrative expenses and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction or acquisition or financing thereof.

(d) "Dormitory" means a housing unit with necessary and usual attendant and related facilities and equipment.

(e) "Educational facility" means a structure suitable for use as a dormitory, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, health care facility (including for an institution of higher education that maintains and operates a school of medicine, structures or facilities providing or designed to provide services as a hospital or clinic, whether the hospital or clinic is operated directly by the institution of higher education or by a separate nonprofit corporation, the member or members of which consist of the educational institution or the members of its governing body), and parking, maintenance, storage or utility facility and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, and the necessary and usual attendant and related facilities and equipment, but shall not include any facility used or to be used for sectarian instruction or as a place

for religious worship or any facility used or to be used primarily in connection with any part of the program of a school or department of divinity.

(f) "Participating college" means a private college that neither restricts entry on racial or religious grounds nor requires all students gaining admission to receive instruction in the tenets of a particular faith, and that, pursuant to this chapter, participates with the authority in undertaking the financing and construction or acquisition of a project.

(g) "Private college" means an institution for higher education other than a public college, situated within the state and that, by virtue of law or charter, is a nonprofit educational institution empowered to provide a program of education beyond the high school level.

(h) "Project" means a dormitory or an educational facility, or any combination thereof, or any function concerning student loans, or interests therein, as determined by the authority.

(i) "Student loan" means any loan having terms and conditions acceptable to the authority that is made to finance or refinance the costs of attendance at any private college, as defined by subdivision (g), or a public college and that is approved by the authority, if the loan is originated pursuant to a program that is approved by the authority.

SEC. 5. Section 94140 of the Education Code is amended to read:

94140. The authority shall have power to do all of the following:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) To adopt and have an official common seal and alter it at pleasure.

(c) To sue and be sued in its own name, and plead and be impleaded.

(d) To borrow money and to issue bonds and notes and other obligations of the authority and to provide for the rights of the holders thereof as provided in this chapter.

(e) To acquire, lease as lessee, hold, and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter.

(f) To acquire in the name of the authority by purchase or otherwise, on the terms and conditions and in the manner as it may deem proper any land or interest therein and other property that it may determine is reasonably necessary for any project, including any lands held by any county, municipality or other governmental subdivision of the state; and to hold and use the same and to sell, convey, lease or otherwise dispose of property so acquired, no longer necessary for the authority's purposes.

(g) To receive and accept, from any federal or other public agency or governmental entity, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept

aid or contributions from any other source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which the grants, loans and contributions may be made.

(h) To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipment of projects for participating colleges under this chapter, and from time to time to modify those plans, specifications, designs or estimates.

(i) By contract or contracts or by its own employees to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating colleges.

(j) To employ consulting engineers, architects, accountants, construction and financial experts, superintendents, and other employees and agents that may be necessary in its judgment and to fix their compensation.

(k) To determine the location and character of any project to be undertaken pursuant to this chapter, and to construct, reconstruct, repair, lease, as lessee or lessor, the same; to enter into contracts for any or all of those purposes; and to designate a participating college as its agent to determine the location and character of a project undertaken by the participating college under this chapter and, as the agent of the authority, to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same, and, as agent of the authority, to enter into contracts for any and all of those purposes including contracts for the management and operation of the project.

(*l*) To establish rules and regulations for the use of a project or any portion thereof and to designate a participating college as its agent to establish rules and regulations for the use of a project undertaken by the participating college.

(m) Generally to fix and revise from time to time and to charge and collect rates, rents, fees and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with holders of its bonds and with any other person, party, association, corporation or other body, public or private, in respect thereof.

(n) To enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this chapter.

(o) To invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.

(p) To charge, and equitably apportion among participating colleges, its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter.

(q) To finance, directly or through an intermediary, or purchase or take assignments of, or make commitments to finance, directly or through an intermediary, or purchase or to take assignments of, student loans, to contract in advance for any such student loans, and to contract in advance for any such financing, purchase, or assignment, and to pay any amounts payable in respect thereto. A student loan shall be eligible for financing or purchase by the authority or for assignment hereunder regardless of the repayment status of the loan. Any pledge made to secure authority financing for student loan project purposes shall be valid and binding from the time the pledge is made. The revenues and receipts of property or interest in the property pledged and thereafter received by the authority, a participating college or public institution of higher education, a servicer, a trustee, or a custodian shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, participating college or public institution of higher education, servicer, trustee, or custodian irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(r) To hold or invest in student loans and to create pools of student loans and sell bonds bearing interest on a taxable or tax-exempt basis or other interests backed by the pools of student loans.

(s) To contract or otherwise provide for the distribution, processing, origination, purchase, sale, servicing, securing, and collection of student loans, the payment of fees, charges, and administrative expenses in connection therewith, and the funding of reserves required or provided for in any resolution authorizing, or trust agreement securing, authority financing for student loan purposes.

SEC. 6. Section 94153 of the Education Code is amended to read:

94153. The total amount of bonds authorized to be outstanding at any one time under this chapter with respect to dormitory or educational facility projects shall be one billion eight hundred million dollars ($1,800,000,000). The total amount of bonds authorized to be outstanding at any one time under this chapter with respect to student loan projects shall be three hundred million dollars ($300,000,000). Bonds that are refunded pursuant to Section 94150 or for which the payment of funds otherwise have been placed in escrow prior to maturity or redemption shall no longer be treated as outstanding, for the purpose of this section.

SEC. 7. Section 94155 of the Education Code is amended to read:

94155. On or before March 31 in each year the authority shall make an annual report of its activities for the preceding calendar year to the Governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the

authority's operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants. The authority shall also consult with the California Postsecondary Education Commission and the Student Aid Commission with respect to the need for additional financing of student loan projects.

SEC. 8. Section 94344 of the Education Code is amended to read:

94344. (a) The governing board or other governing authority of any private California postsecondary or vocational educational institution shall adopt regulations providing for the withholding of institutional services from students or former students who have been notified, in writing, at the student's or former student's last known address, that he or she is in default on a loan or loans under any of the following loan programs:

(1) The Stafford Student Loan program.

(2) The Supplemental Loans for Students program.

(3) Any program directly or indirectly financed by the California Educational Facilities Authority.

"Default," as used in this section, with respect to a loan under the Stafford Student Loan program or Supplemental Loans for Students program means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days for a loan repayable in monthly installments, or 240 days for a loan repayable in less frequent installments. "Default," as used in this section, with respect to a program directly or indirectly financed by the California Educational Facilities Authority, means the failure of a borrower to make an installment payment when due, or to meet other terms of the loan, within that period and under the circumstances determined by the California Educational Facilities Authority with respect to that program.

(b) The regulations adopted pursuant to subdivision (a) shall provide that the services withheld may be provided during a period when the facts are in dispute and when the student or former student demonstrates to either the governing board or other appropriate governing authority of the institution, or the Student Aid Commission and the appropriate entity or its designee, that reasonable progress has been made to repay the loan or that there exists a reasonable justification for the delay as determined by the institution. The regulations shall specify the services to be withheld from the student and may include, but are not limited to, the following:

(1) The provision of grades.

(2) The provision of transcripts.

(3) The provision of diplomas.

The adopted regulations shall not include the withholding of registration privileges.

(c) When it has been determined that an individual is in default on a loan or loans under either of the loan programs specified in subdivision (a), the Student Aid Commission shall give notice of the default to all institutions through which that individual acquired the loan or loans.

(d) Guarantors, or those who act as their agents or act under their control, who provide information to institutions pursuant to this section, shall defend, indemnify, and hold harmless the governing board or other governing authority of the institutions from action resulting from compliance with this section when the action arises as a result of incorrect, misleading, or untimely information provided to the institution by the guarantors, their agents, or those acting under the control of the guarantors.

CHAPTER 918

An act to amend Section 4420 of the Government Code, relating to public works.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. It is the intent of the Legislature, in establishing conditions for the use of wrap-up insurance pursuant to this act, that public agencies subject to Section 4420 of the Government Code take into consideration a contractor's past safety experience as reflected by, but not limited to, the contractor's workers' compensation experience modification rates over a period of time.

SEC. 2. Section 4420 of the Government Code is amended to read:

4420. (a) No officer or employee of this state, or of any public agency or of any public authority, and no person acting or purporting to act on behalf of any officer, employee, or public agency or authority, except a public agency or authority created pursuant to agreement or compact with another state, shall, with respect to any public building or construction contract that is about to be or that has been competitively bid, require the bidder to make application to, or furnish financial data to, or to obtain or procure any surety bond or contract of insurance specified in connection with the contract, or specified by any law, ordinance, or regulation, from, a particular surety or insurance company, agent, or broker.

(b) No officer or employee, or person, firm, or corporation acting or purporting to act on behalf of any officer or employee, shall

negotiate, make application for, obtain, or procure any surety bond or contract of insurance, except contracts of insurance for builder's risk or owner's protective liability, that can be obtained or procured by the bidder, contractor, or subcontractor.

(c) Subdivision (b) shall not apply to the construction of any exclusive public mass transit guideway project in any county with a population exceeding 5,000,000, or in the County of Santa Clara or the City and County of San Francisco; to any exclusive public mass transit guideway project undertaken by either the San Francisco Bay Area Rapid Transit District or the Sacramento Regional Transit District; to any airport expansion project undertaken at the San Francisco International Airport; to any water, wastewater, or reclamation project undertaken by a public agency serving a population exceeding 250,000; to any exclusive public water storage or conveyance facility undertaken by a metropolitan water district that was organized under the Metropolitan Water District Act, Chapter 209 of the Statutes of 1969, as amended; to any county medical center within San Bernardino County or Riverside County; to any construction project undertaken by the harbor departments of the City of Los Angeles and the City of Long Beach, or any joint powers authority formed by the City of Los Angeles and the City of Long Beach, for the purpose of improving the Alameda Corridor; to any construction or renovation project undertaken by the Foothill/Eastern or San Joaquin Hills Transportation Corridor Agencies in Orange County; or to construction or renovation of additions to any county medical center located within Santa Clara County.

(d) (1) Notwithstanding subdivision (b), commencing January 1, 1996, a public agency may utilize owner-controlled or wrap-up insurance programs if all of the following conditions are met:

(A) The total cost of the public works project is over one hundred twenty-five million dollars ($125,000,000).

(B) The program maintains completed operation coverage for a term for which the Insurance Commissioner has determined that coverage is reasonably commercially available, but in no event less than three years.

(C) Bid specifications clearly specify for all bidders the insurance coverage provided under the program, and minimum safety requirements that must be met.

(D) The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor or subcontractor believes is necessary to protect themselves from any liability arising out of the contract.

(E) The program does not include surety insurance.

(2) Safety requirements for a public works project subject to this subdivision may be developed jointly between the public agency and the prime contractor. In the event the public agency requires a safety program different than the prime contractor's usual and customary

program, the program shall be mutually agreed upon, taking into account the prime contractor's experience, expertise, existing labor agreements relating to safety issues, and any unique safety issues relating to the project.

(3) This subdivision shall not affect any provision in a collective bargaining agreement specified in Section 3201.5 of the Labor Code that is submitted by the prime contractor with its construction bid.

(4) For purposes of this subdivision, "owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover all of the contractors and subcontractors on a given project for purposes of general liability and workers' compensation.

(5) For purposes of this subdivision, "public works project" means construction being performed at one site or at a series of contiguous sites separated only by a street, roadway, waterway, or railroad right-of-way, or along a continuous system for the provision of water and power.

(e) As used in this section, "public agency" means any city, county, city and county, district, municipal or public corporation, or any agency or instrumentality thereof.

CHAPTER 919

An act to add Section 14311 to the Elections Code, relating to elections.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 14311 is added to the Elections Code, to read:

14311. (a) A voter who has moved from one address to another within the same county and who has not reregistered to vote at that new address may, at his or her option, and upon showing proof of current residence, vote on the day of the election at the polling place at which he or she is entitled to vote based on his or her current residence address, or at the office of the county elections official or other central location designated by that elections official. The voter shall be reregistered at the place of voting for future elections.

(b) Voters casting ballots under this section shall be required to vote by provisional ballot, as provided in Section 14310.

(c) The Secretary of State shall, by regulation, adopt procedures for determining the documents or other materials that constitute proof of residence for purposes of voting under this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this

act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 920

An act to amend Sections 1770, 1771, 1771.2, 1771.4, 1771.6, 1771.8, 1772, 1773, 1775, 1776.2, 1777, 1777.2, 1777.4, 1778, 1779, 1779.2, 1779.4, 1779.6, 1779.8, 1779.10, 1780, 1780.2, 1780.4, 1781, 1781.2, 1781.4, 1781.8, 1782, 1783, 1783.2, 1784, 1785, 1786, 1786.2, 1787, 1788, 1788.2, 1788.4, 1789, 1789.2, 1789.4, 1789.6, 1789.8, 1790, 1791, 1792, 1792.2, 1793, 1793.5, 1793.6, 1793.7, 1793.9, 1793.11, 1793.13, 1793.15, 1793.17, 1793.19, 1793.21, 1793.23, 1793.25, 1793.27, 1793.29, 1793.31, 1793.50, 1793.52, 1793.54, 1793.56, 1793.58, 1793.60, and 1793.62 of, to add Sections 1771.5 and 1793.8 to, and to repeal Section 1788.3 of, the Health and Safety Code, relating to continuing care contracts, and making an appropriation therefor.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 1770 of the Health and Safety Code is amended to read:

1770. The Legislature finds, declares, and intends all of the following:

(a) Continuing care retirement communities are an alternative for the long-term residential, social, and health care needs of California's elderly residents, seek to provide a continuum of care, minimize transfer trauma, and allow for provision of services in an appropriately licensed setting.

(b) Because elderly residents often expend a significant portion of their savings in order to purchase care in the retirement community and, thereby, expect to receive care at the retirement community for the rest of their lives, tragic consequences can result from a continuing care provider becoming insolvent or unable to provide responsible care.

(c) There is a need for disclosure concerning the terms of agreements made between prospective residents and the continuing care provider, and concerning the operations of the continuing care retirement community.

(d) Providers of continuing care should obtain a certificate of authority to enter into continuing care contracts and be monitored and regulated by the State Department of Social Services.

(e) This chapter applies equally to for-profit and nonprofit provider entities.

(f) This chapter shall be the minimum requirement to be imposed upon any entity offering or providing continuing care, as set forth in this chapter.

(g) Because the authority to enter into continuing care contracts granted by the State Department of Social Services is neither a guarantee of performance by the providers nor an endorsement of contract provisions, prospective residents must carefully consider the risks, benefits, and costs before signing a continuing care contract and should be encouraged to seek financial and legal advice before doing so.

SEC. 2. Section 1771 of the Health and Safety Code is amended to read:

1771. Unless the context otherwise requires, the definitions in this section govern the interpretation of this chapter.

(a) (1) "Affinity group" means a grouping of individuals sharing a common interest, philosophy, or connection (e.g., military officers, religion, etc.).

(2) "Annual report" means audited financial statements and reserve calculations (as required by Sections 1792.2 and 1793), with accompanying certified public accountant's opinions thereon, resident lists, evidence of fidelity continuing care bond, and certification that the contract in use for new residents has been approved by the department, all to be submitted to the department by each provider annually, as required by Section 1790.

(3) "Applicant" means any entity that submits an application to the department for a permit to sell deposit subscriptions and certificate of authority.

(b) [reserved]

(c) (1) "Cancellation" means to destroy the force and effect of an agreement or continuing care contract, by making or declaring it void or invalid.

(2) "Cancellation period" means the 90-day period, beginning when the transferor signs the continuing care contract, during which time the resident or transferor may rescind the continuing care contract.

(3) "Care" means nursing, medical, or other health related services, protection or supervision, or assistance with the personal activities of daily living, or any combination of those services.

(4) "Cash equivalent" means certificates of deposit and United States treasury securities with a maturity of five years or less. Possession and control of any of these instruments shall be transferred to the escrow agent or depository at the time the deposit is paid.

(5) "Certificate" or "certificate of authority" means the written authorization from the department for a specified provider to enter into one or more continuing care contracts at a single specified continuing care retirement community.

(6) "Condition" means a restriction or required action placed on a provisional or final certificate of authority by the department. A condition may limit the circumstances under which the provider may enter into any new contract, or may be a condition precedent to the issuance of a final certificate of authority.

(7) "Consideration" means some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.

(8) "Continuing care contract" means a written contract, which includes a promise, expressed or implied, by a provider to provide one or more elements of care to an elderly resident for the duration of his or her life or for a term in excess of one year, in exchange for the payment of an entrance fee, or payment of periodic charges, or both types of payments. A continuing care contract may consist of one or a series of agreements and may have other writings incorporated by reference. A life care contract, as defined in paragraph (1) of subdivision (*l*) is a type of continuing care contract.

(9) "Continuing care contract committee" means an advisory panel appointed pursuant to Section 1777.

(10) "Continuing care retirement community" (CCRC) means a facility where services promised in a continuing care contract are provided. A distinct phase of development approved by the department may be considered to be the continuing care retirement community when a project is being developed in successive multiple phases over a period of time. When the services are provided in a resident's own home, the homes into which the provider takes those services collectively are considered part of the community.

(11) "Control" means the power to direct or cause the direction of the management and policies of an operator of a continuing care retirement community, whether through the ownership of voting securities, by contract or otherwise. A parent or sole corporate member of a corporation may exhibit control of the operator of the continuing care retirement community through direct participation in the initiation or approval of policies directly affecting the operations, including, but not limited to, approval of budgets or approval of the continuing care retirement community administrator.

(d) (1) "Department" means the State Department of Social Services.

(2) "Deposit subscription" means cash or cash equivalent payment made by a subscriber to an applicant and the escrow agent prior to the release of escrow during development or construction of a continuing care retirement community.

(3) "Deposit subscription agreement" means a written contract in compliance with Section 1780.4 entered into between the transferor and applicant. This agreement allows an applicant to accept deposit subscriptions prior to the issuance of a provisional certificate of authority.

(4) "Depository" means a bank or institution that is a member of the Federal Deposit Insurance Corporation or a comparable title insurance program. The department's approval of the depository will be based, in part, upon its capability to ensure the safety of funds and properties entrusted to it and capable and willing to perform the obligations of the depository pursuant to the escrow agreement and this chapter. The depository may be the same entity as the escrow agent.

(5) "Director" means the Director of the State Department of Social Services.

(e) (1) "Elderly" means an individual who is 60 years of age or older.

(2) "Entity" means an organization or being that possesses separate existence for tax purposes. Entity includes person, sole proprietorship, estate, trust, association, joint venture, partnership, and corporation.

(3) "Entrance fee" means an initial or deferred transfer of consideration made or promised to be made by a person entering into a continuing care contract, for the purpose of assuring care or related services pursuant to that continuing care contract or as full or partial payment for the promise to provide one or more elements of care for the term of the continuing care contract. An entrance fee includes the purchase price of a condominium, cooperative, or other interest sold in connection with a promise of continuing care. The entrance fee may include a previously paid deposit subscription, which is credited to the total entrance fee due at the time the transferor signs the continuing care contract. An entrance fee that is greater than 12 times the monthly fee shall be presumed to imply a promise to provide care for more than one year. The term "accommodation fee" may be synonymously used to mean an entrance fee.

(4) "Equity" means the residual value of a business or property beyond any mortgage or deed of trust thereon and liability therein.

(5) "Equity project" means a continuing care development project wherein the transferors are given an equity interest in the continuing care retirement community property or in a transferable membership in a resident's association.

(6) "Escrow agent" means a bank or institution, including, but not limited to, a title insurance company, approved by the department as capable of ensuring the safety of the funds and properties entrusted to it and capable and willing to perform the terms of the escrow pursuant to the escrow agreement and the provisions of this chapter.

(f) (1) "Facility" means any place or accommodation in which a provider undertakes to provide a resident with care or related services, whether or not the place or accommodation is constructed, owned, leased, rented, or otherwise contracted for by the provider.

(g) [reserved]

(h) [reserved]

(i) "Inactive certificate of authority" means a certificate which has been declared inactive under Section 1793.8 and renders its holder no longer authorized to enter into continuing care contracts, but still contractually obligated to continuing care residents and statutory compliance requirements.

(j) [reserved]

(k) [reserved]

(*l*) (1) "Life care contract" means a continuing care contract which includes a promise, expressed or implied, by a provider to provide routine services at all levels of care; including acute care and physicians and surgeons' services, to a resident for the duration of his or her life. Care shall be provided in a continuing care retirement community having a comprehensive continuum of care, including a skilled nursing facility, under the ownership and supervision of the provider on, or adjacent to, the premises. In a life care contract, no change is made in the monthly fee based on level of service. A life care contract shall also include provisions to subsidize residents who become financially unable to pay their monthly care fees.

(2) "Life lease" means a landlord-tenant relationship wherein the tenant obtains only the right to possess a defined living unit for life. In a life lease there is no obligation, or intent, to provide care and services to the tenant at any time, present or future.

(m) (1) "Monthly care fee" means the monthly charge to a resident for accommodations and services rendered, including care, board, or lodging, and any other periodic charges to the resident, determined on a monthly or other recurring basis, pursuant to the provisions of a continuing care contract. Monthly care fees are exclusive of periodic entrance fee payments or other prepayments.

(2) "Monthly fee contract" means a continuing care contract that provides by its terms for the monthly payment of a fee for accommodations and services rendered.

(n) (1) "Nonambulatory person" means a person who is unable to leave a building unassisted under emergency conditions, as required by Section 13131.

(o) [reserved]

(p) (1) "Per capita cost" means a continuing care retirement community's operating expenses, excluding depreciation, divided by the average number of residents.

(2) "Permit to sell deposit subscriptions" means a written authorization by the department for an applicant to enter into one or more deposit subscription agreements at a single specified location.

(3) "Personal care" means assistance with personal activities of daily living, including dressing, feeding, toileting, bathing, grooming, mobility, and associated tasks, to help provide for and maintain physical and psychosocial comfort.

(4) "Personal care unit" means the living unit within a physical area of a continuing care retirement community specifically designed to provide ongoing personal care. A personal care unit is synonymous with an assisted living unit.

(5) "Prepaid contract" means a continuing care contract in which the monthly care fee, if any, may not be adjusted to cover the actual cost of care and services.

(6) "Processing fee" means a payment by the transferor to cover administrative costs of processing the application of a subscriber or prospective resident.

(7) "Promise to provide care" means any expressed or implied representation that care will be provided or will be available, such as by preferred access, whether the representation is part of a continuing care contract, other agreement, or series of agreements, or contained in any advertisement, brochure, or other material, either written or oral.

(8) "Proposes" means a representation that an applicant or provider plans to make a future promise to provide care, which may be subject to the happening of certain events, such as continuing care retirement community construction or obtaining a certificate of authority.

(9) "Provider" means an entity which provides, promises to provide, or proposes to promise to provide, care for life or for more than one year. A provider shall include any entity that controls the entity that promises care as determined by the department. Homeowner's associations, cooperatives, or condominium associations shall not be providers.

(10) "Provisional certificate of authority" means written authorization by the department that allows the provider to enter into continuing care contracts. This provisional certificate is issued after the conditions defined in Section 1786 have been met and is issued for a term defined under subdivision (b) of Section 1786.

(q) [reserved]

(r) (1) "Refundable reserve" means the amount calculated to ensure the availability of funds for specified refunds of entrance fees.

(2) "Refundable contract" means a continuing care contract form that includes promises, expressed or implied, to pay refunds of entrance fees or to repurchase the transferor's unit, membership, stock, or other interest in the continuing care retirement community when the specified refund right is not fully amortized by the end of the sixth year of residency. A lump sum payment to a resident after termination of a continuing care contract that is conditioned upon resale of a unit shall not be considered a refund and shall not be advertised as a refund.

(3) "Reservation fee" means cash received by an applicant from an interested individual during a market test feasibility study, which complies with subdivision (b) of Section 1771.6.

(4) "Resident" means a person who enters into a continuing care contract with a provider, or who is designated in a continuing care contract to be a person being provided or to be provided services, including care, board, or lodging.

(5) "Residential care facility for the elderly" means a housing arrangement as defined by Section 1569.2.

(6) "Residential living unit" means a living unit in a continuing care retirement community which is included in the residential care facility for the elderly license capacity, but not used exclusively for personal care or nursing services.

(s) "Subscriber" means a person who has applied to be a resident, in a continuing care retirement community under development or construction, and who has entered into a deposit subscription agreement.

(t) (1) "Termination" means the ending of a continuing care contract as provided for in the terms of the continuing care contract.

(2) "Transfer" means conveyance of a right, title, or interest.

(3) "Transfer fee" means a levy by the provider against the proceeds from the sale of a transferor's equity interest.

(4) "Transfer trauma" means death, depression, or regressive behavior, caused by the abrupt and involuntary transfer of an elderly resident from one home to another, resulting in a loss of familiar physical environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of an abrupt break in the small routines of daily life, and the major loss of visits from friends and relatives who may be unable to reach the new facility.

(5) "Transferor" means a person who transfers or promises to transfer a sum of money or property for the purpose of assuring care or related services pursuant to a continuing care contract, whether for the benefit of the transferor or another.

SEC. 3. Section 1771.2 of the Health and Safety Code is amended to read:

1771.2. (a) No entity proposing to promise to provide care shall enter into a deposit subscription agreement or sell a deposit subscription unless the entity has applied for and received a current and valid permit to sell deposit subscriptions.

(b) No continuing care contract shall be executed, unless the provider has a current and valid provisional or final certificate of authority.

(c) If a provider subcontracts or assigns to another entity the responsibility to provide continuing care, that other entity shall have a current and valid certificate of authority. The provider holding a certificate of authority may contract for the provision of a particular aspect of continuing care, such as medical care, with another entity that does not possess a certificate of authority, if that other entity is

appropriately licensed under laws of this state to provide that care, and that care is not paid for more than one year in advance.

(d) If an entity enters into an agreement to provide care for life or for more than one year to a person under 60 years of age in return for payment of an entrance fee or periodic charges, and the agreement includes the provision of services to that person after age 60, the entity shall either terminate the continuing care contract or meet all requirements of this chapter when the first such person turns 60 years of age.

(e) Homeowner's associations, cooperatives, or condominium associations shall not be providers.

SEC. 4. Section 1771.4 of the Health and Safety Code is amended to read:

1771.4. Any entity which promises to provide care for life or for more than one year in return for payment of an entrance fee or periodic charges from, or on behalf of, a person 60 years of age or older shall first obtain written licenses for the entire continuing care retirement community pursuant to Chapter 3.2 (commencing with Section 1569), including residential living and personal care units, and Chapter 2 (commencing with Section 1250) if a skilled nursing facility is on the premises.

SEC. 5. Section 1771.5 is added to the Health and Safety Code, to read:

1771.5. (a) A continuing care retirement community shall maintain an environment that enhances the residents' self-determination and independence. The provider shall:

(1) Permit the formation of a resident council by interested residents, provide space and post notices for meetings, and provide assistance in attending meetings for those residents who request it. In order to permit a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any continuing care retirement community personnel. The council may, among other things, make recommendations to management regarding resident issues which impact their quality of life. Proper notice shall be provided of all council meetings and the meetings shall be open to all residents to attend as well as present issues when prearranged with the council president. Executive sessions of the council shall be for attendance only by council members.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management and access to the board of directors or general partners. The policies and procedures shall be evaluated at a minimum of every two years by the continuing care retirement community administration to determine their effectiveness in maintaining meaningful resident/management relations.

(b) The department may, upon receiving a complaint relative to this section, request a copy of the policies and procedures along with documentation on the conduct and findings of any self-evaluations

and consult with the Continuing Care Contract Committee for determination of compliance.

(c) Failure to comply with this section shall be grounds for suspension, condition, or revocation of the provisional or final certificate of authority pursuant to Section 1793.21.

SEC. 6. Section 1771.6 of the Health and Safety Code is amended to read:

1771.6. (a) This chapter does not apply to any of the following:

(1) Any arrangement for the care of a person by a relative.

(2) Any arrangement for the care of a person or persons from only one family by a friend.

(b) Any market test feasibility study during which reservation fees are being collected shall not be considered to be a violation of this chapter, provided that all of the following have occurred:

(1) An application for a permit to sell deposit subscriptions and a certificate of authority for the project has been filed with, and the receipt has been acknowledged in writing by, the department.

(2) The amount of each reservation fee does not exceed 1 percent of the average entrance fee.

(3) The reservation fee is placed in escrow.

(4) The escrow agreement provides for a refund within 10 calendar days after the request of a potential resident or within 10 calendar days after denial of the application for the permit to sell deposit subscriptions.

(5) The escrow agreement provides for the conversion of the reservation fee to a deposit subscription when a permit to sell deposit subscriptions is issued.

SEC. 7. Section 1771.8 of the Health and Safety Code is amended to read:

1771.8. (a) Any entity which believes its project is not subject to this chapter or which is contemplating a project which it believes may not be subject to this chapter, may apply to the department for a Letter of Non-applicability.

(b) Applications for Letters of Non-applicability shall be made to the department in writing and include the following:

(1) A nonrefundable one thousand dollar ($1,000) application fee.

(2) A list of the reasons why the existing or proposed project may be exempt.

(3) A copy of the existing or proposed contract between the entity and residents.

(4) Copies of all advertising material.

(5) Any other reasonable information requested by the department.

(c) The department shall follow these timelines in reviewing requests for Letters of Non-applicability:

(1) Within seven calendar days, the department shall acknowledge receipt of the request.

(2) Within 30 calendar days after all materials are received, the department shall either issue the Letter of Non-applicability, or notify the entity of the department's reasons for denial of the request.

(d) If the department determines that the entity does not qualify for a Letter of Non-applicability, the entity shall refrain from or immediately cease entering into continuing care contracts.

(1) If the entity intends to provide continuing care, an application for a certificate of authority shall be filed with the department pursuant to this chapter.

(2) If the entity does not intend to provide continuing care, it shall alter its plan of operation so that the project is not subject to this chapter and submit a new application and fee for a Letter of Non-applicability.

SEC. 7.5. Section 1772 of the Health and Safety Code is amended to read:

1772. (a) Except as otherwise provided in paragraph (5) of subdivision (a) of Section 1788, no report, circular, public announcement, certificate, financial statement, or any other printed matter or advertising material, or oral representation, that states or implies that any entity sponsors, guarantees, or assures the performance of any continuing care contract, shall be published or presented to any prospective resident unless the entity files with the department a written and legally sufficient document of acceptance of full financial responsibility for each continuing care contract. Each entity shall be listed as a provider on the certificate of authority and shall be cosigner on the continuing care contracts.

(1) Implied sponsorship includes the use of the name of an entity for the purpose of implying that the entity's reputation may be relied upon to determine the likelihood of success of the proposed continuing care retirement community.

(2) Any implication that the entity may be financially responsible for these contracts may be rebutted by a conspicuous statement in each continuing care contract and marketing materials that clearly inform the transferor that the entity is not financially responsible.

(b) On written appeal to the department, and for good cause shown, the department may, in its discretion, allow an affinity group exemption from this section. If an exemption is granted, every continuing care contract shall include a conspicuous statement which clearly informs the transferor that such entity is not financially responsible.

(c) If the name of any entity, including, but not limited to, a religion, is used in connection with the development, marketing, or continued operation of a continuing care retirement community, but that entity does not actually own, control, manage, or otherwise operate the facility, the providers shall expressly disclose this lack of affiliation in the continuing care contract.

(d) All printed advertising materials, including brochures, circulars, public announcements, and similar publications pertaining

to continuing care shall identify the current status of the continuing care retirement community as follows: (1) If a certificate of authority has not been issued, then specify whether the application for continuing care has been filed, permit to sell deposit subscriptions issued, or provisional certificate of authority issued.

(2) If a certificate of authority has been issued, specify the providers' certificate of authority number.

SEC. 8. Section 1773 of the Health and Safety Code is amended to read:

1773. No certificate of authority has value for sale or exchange as property. No provider shall sell or transfer ownership of the continuing care retirement community or enter into a contract with a third party entity for management of the continuing care retirement community without the approval of the department. Violation of this section is grounds for revocation of the certificate of authority.

SEC. 9. Section 1775 of the Health and Safety Code is amended to read:

1775. (a) To the extent that this chapter conflicts with the statutes, regulations, or interpretations enforced by the Department of Real Estate, this chapter as interpreted by the department shall have precedence.

(b) Notwithstanding any law or regulation to the contrary, in any continuing care retirement community the provider may restrict or abridge the right of any resident, whether or not he owns an equity interest, to sell, lease, encumber, or otherwise convey any interest in the resident's unit, and may require that the resident only sell, lease, or otherwise convey the interest to persons approved by the provider. Provider approval may be based on factors which include, but are not limited to, age, health status, insurance risk, financial status, or burden on the provider's personnel, resources, or physical facility. Any restrictions on a real property interest shall be recorded by the provider.

(c) To the extent that this chapter conflicts with Sections 51.2 and 51.3 of the Civil Code, this chapter shall have precedence. A continuing care provider, at its discretion, may limit entrance based on age.

(d) This chapter imposes minimum requirements upon any entity undertaking the responsibility for providing one or more elements of care to an elderly person for the duration of his or her life or for a term in excess of one year, in exchange for any prepayment or transfer of property prior to the services actually being rendered, whether or not the prepayment or transfer of property is supplemented with periodic or other payments.

(e) This chapter shall be liberally construed for the protection of persons attempting to secure their care for the remainder of their lifetime or for a period in excess of one year.

(f) A resident's entry into a continuing care contract described in this chapter shall be presumptive evidence of the resident's intent not to return to his or her prior residence to live for purposes of qualifying for Medi-Cal coverage under Sections 14000 et seq. of the Welfare and Institutions Code and Section 50425 of Title 22 of the California Code of Regulations.

SEC. 10. Section 1776.2 of the Health and Safety Code is amended to read:

1776.2. The department may, by any duly authorized representative, inspect and examine any continuing care retirement community, including the books and records thereof, or the performance of any service required by the continuing care contracts.

SEC. 11. Section 1777 of the Health and Safety Code is amended to read:

1777. (a) The Continuing Care Contracts Committee of the State Department of Social Services shall act in an advisory capacity to the department on matters relating to continuing care contracts.

(b) The members of the committee shall include:

(1) Three representatives of nonprofit continuing care providers pursuant to this chapter, each of whom shall have offered continuing care services for at least five years prior to appointment. One member shall represent a multifacility provider and shall be appointed by the Governor in even years. One member shall be appointed by the Senate Committee on Rules and shall be appointed in odd years. One member shall be appointed by the Speaker of the Assembly and shall be appointed in odd years.

(2) Three senior citizens who are not eligible for appointment pursuant to paragraphs (1) and (4) who shall represent consumers of continuing care services, at least two of whom shall be residents of continuing care retirement communities but not residents of the same provider. One member shall be appointed by the Governor and shall be appointed in even years. One member shall be appointed by the Senate Committee on Rules and shall be appointed in odd years. One member shall be appointed by the Speaker of the Assembly and shall be appointed in odd years.

(3) A certified public accountant with experience in the community care industry, who is not a provider of continuing care services. This member shall be appointed by the Governor in even years.

(4) A representative of a for-profit provider of continuing care contracts pursuant to this chapter. This member shall be appointed by the Governor in even years.

(5) An actuary. This member shall be appointed by the Governor in even years.

(c) Commencing January 1, 1997, all members shall serve two-year terms and be appointed based on their interest and expertise in the subject area. The Governor shall designate the

chairperson for the committee with the advice and consent of the Senate. A member may be reappointed at the pleasure of the appointing power. It shall be the duty of the appointing power to fill all vacancies on the committee within 60 days. These members shall continue to serve until their successors are appointed and qualified.

(d) The members of the committee shall serve without compensation, except that each member shall be paid from the Continuing Care Contract Provider Fee Fund a per diem of twenty-five dollars ($25) for each day's attendance at a meeting of the committee not to exceed six days in any month. The members of the committee shall also receive their actual and necessary traveling expenses incurred in the course of their duties.

(e) Prior to commencement of service, each member shall file with the department a statement of economic interest and a statement of conflict of interest pursuant to Article 3 (commencing with Section 87300) of the Government Code.

(f) If, during the period of appointment, any member no longer meets the qualifications of subdivision (b), that member shall submit his or her resignation to their appointing power and a qualified new member shall be appointed to fulfill the remainder of the term.

SEC. 12. Section 1777.2 of the Health and Safety Code is amended to read:

1777.2. (a) The Continuing Care Contracts Committee shall:

(1) Review the financial and managerial condition of each continuing care retirement community operating under a certificate of authority.

(2) Review the financial condition of any continuing care retirement community that the committee determines is indicating signs of financial difficulty and may be in need of close supervision.

(3) Monitor the condition of continued care retirement communities as the department or the chair of the committee may direct.

(4) Make available consumer information on the selection and necessary contract protections in the purchase of continuing care contracts.

(5) Review new applications regarding financial, actuarial, and marketing feasibility as requested by the department.

(6) The Continuing Care Contracts Committee of the department, in consultation with residents and providers shall, by December 31, 1997, advise the department of its suggestions to protect continuing care retirement communities and residents from the financial consequences caused by earthquakes and other natural disasters. This paragraph shall become inoperative on January 1, 1998.

(b) The committee shall make recommendations to the department regarding needed changes in its rules and regulations and upon request provide advice regarding the feasibility of new continuing care retirement communities and the correction of problems relating to the management or operation of any continuing

care retirement community. The committee shall also perform any other advisory functions necessary to improve the management and operation of continuing care retirement communities.

(c) The committee may report on its recommendations directly to the director of the department.

(d) The committee may hold meetings, as deemed necessary to the performance of its duties.

SEC. 13. Section 1777.4 of the Health and Safety Code is amended to read:

1777.4. Any member of the Continuing Care Contracts Committee is immune from civil liability based on acts performed in his or her official capacity. Costs of defending civil actions brought against a member for acts performed in his or her official capacity shall be borne by the complainant. However, nothing in this section immunizes any member for acts or omissions performed with malice or in bad faith.

SEC. 14. Section 1778 of the Health and Safety Code is amended to read:

1778. (a) There is hereby created in the State Treasury a fund which shall be known as the Continuing Care Provider Fee Fund. The fund shall consist of fees received by the department pursuant to this chapter. Notwithstanding Section 13340 of the Government Code, the Continuing Care Provider Fee Fund is hereby continuously appropriated to the department, without regard to fiscal years.

(b) Use of the funds appropriated pursuant to this section shall include funding of the following:

(1) Program personnel salary costs, to include but not be limited to: Continuing Care Contracts Program Manager at a level consistent with other management classifications that direct a regulatory program with statewide impact requiring skills and knowledge at the highest level with responsibility for work of the most critical or sensitive nature as it relates to the department's mission, including protecting vulnerable elderly persons, supervising technical staff with oversight of highly complex operations and responsibility for policy and program evaluation and recommendations; full-time legal counsel with a working knowledge of all laws relating to the regulation of continuing care retirement communities and residential care facilities for the elderly; financial analyst with working knowledge of generally accepted accounting principles and auditing standards; and other appropriate analytical and technical support positions.

(2) Contracts with technically qualified persons, to include but not be limited to financial, actuarial, and marketing consultants, as necessary to provide advice regarding the feasibility or viability of continuing care retirement communities and providers.

(3) Other program costs or costs directly supporting program staff.

(4) The department shall use no more than 5 percent of the fees collected pursuant to this section for overhead costs, including facilities operation, and indirect department and division costs.

(c) If the balance in the Continuing Care Provider Fee Fund is projected to exceed five hundred thousand dollars ($500,000) for the next budget year, the department shall adjust the calculations for the application fees under Section 1779.2 and annual fees under Section 1791 to reduce the amounts collected.

(d) The intent of the Legislature is to empower the program administrator with the ability and authorization to obtain necessary resources or staffing to carry out the program objectives.

SEC. 15. Section 1779 of the Health and Safety Code is amended to read:

1779. (a) An application for a permit to sell deposit subscriptions and certificate of authority shall be filed with the department, as set forth in this chapter, in any of the following circumstances:

(1) Prior to entering into any continuing care contracts or any deposit subscription agreements.

(2) Prior to initiating construction of a prospective continuing care continuing care retirement community.

(3) Prior to initiating construction on a new phase or expansion of an existing continuing care retirement community. An expansion has occurred when there is an increase in Residential Care Facility for the Elderly license capacity, an increase in the number of units at the continuing care retirement community, an increase in the number of skilled nursing beds, or additions to or replacement of existing continuing care retirement community structures that affects obligations to current residents. The department has the discretion to eliminate all or portions of the application contents required under Section 1779.4 for an expansion of an existing continuing care retirement community.

(4) Prior to converting an existing structure to a continuing care retirement community.

(5) Prior to recommencing marketing on a planned facility when the applicant has previously forfeited a permit to sell deposit subscriptions pursuant to Section 1793.7.

(6) Prior to executing new continuing care contracts after a provisional or final certificate of authority has been inactivated, revoked, surrendered, or forfeited.

(7) Prior to closing the sale or transfer of a continuing care retirement community.

(b) If the provider undergoes an organizational change, including, but not limited to, a change in structure, separation, or merger, a new application shall be required and a new certificate of authority must be issued by the department before any continuing care contracts may be executed by the new entity.

(c) A new application is not required for an entity name change, if there is no change in the entity structure or management. If the

provider undergoes a name change, the provider shall notify the department of the name change and shall return the previously issued certificate of authority for reissuance under the new corporate name.

SEC. 16. Section 1779.2 of the Health and Safety Code is amended to read:

1779.2. (a) A formal application shall be made by a person or organization to the department for a permit to sell deposit subscriptions and certificate of authority, as provided in this chapter.

(b) A separate application shall be required for each proposed project which includes all planned phases.

(c) The application shall be signed under penalty of perjury by the applicant. If the applicant is a corporation, the chief executive officer shall sign the application and certify that to the best of his or her knowledge and belief, the items are correct. If the applicant is a partnership, each general partner shall sign the application and certification. If there are multiple applicants, the above requirements apply to each.

(d) An application fee shall be required whenever a provider applies for a permit to sell deposit subscriptions and certificate of authority.

The application fee shall be calculated and submitted to the department as follows:

(1) Each application shall be accompanied by payment to the Continuing Care Provider Fee Fund of 80 percent of the application fee for all currently planned phases. Processing of the application shall not begin until this fee is received.

(A) For new continuing care retirement communities or for the sale or transfer of existing continuing care retirement communities, the application fee is calculated as one-tenth of 1 percent of the purchase price of the continuing care retirement community, or the estimated construction cost, including the purchase price of the land or the present value of any long-term lease.

(B) For existing continuing care retirement communities that are proposing remodeling or an expansion, the application fee is calculated as one-tenth of 1 percent of the cost of the addition, annexation, or renovation, including the cost of the land and improvements.

(C) For existing facilities converting to continuing care retirement communities, the application fee is calculated as one-tenth of 1 percent of the current appraised value of the facility, including land, or present value of any long-term lease.

(2) Payment to the Continuing Care Provider Fee Fund of the remainder of the application fee shall be made at or before the time of issuance of the provisional certificate of authority. The application fee shall be calculated as one-tenth of 1 percent of the purchase price of the continuing care retirement community, or the actual construction cost, including the purchase price of the land or the

present value of any long-term lease, less the payment included with the application. The provisional certificate of authority shall not be issued until the balance of the fee is paid.

SEC. 17. Section 1779.4 of the Health and Safety Code is amended to read:

1779.4. An application shall contain all of the following:

(a) The name and business address of the applicant.

(b) An itemization of the total fee calculation, including sources of figures used, and a check in the amount of 80 percent of the total application fee.

(c) The name, address, and a description of the real property of the continuing care retirement community.

(d) The estimated number of continuing care residents of the continuing care retirement community.

(e) A description of the proposed continuing care retirement community, including the services and care to be available for residents or provided to residents, or both.

(f) A statement indicating whether the application is for a certificate of authority to enter into life care contracts.

(g) Documentation evidencing a preliminary approval for licensure from the State Department of Social Services, Community Care Licensing Division, or the Licensing and Certification Division of the State Department of Health Services, as appropriate.

(h) If the applicant is an individual, a statement disclosing any revocation or other disciplinary action taken, or in the process of being taken, against a license, permit, or certificate held or previously held by the applicant.

(i) A description of any matter in which any principal involved with the proposed continuing care retirement community has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property. For the purpose of this paragraph, "principal" means any representative of the developer or applicant including a general partner, chief executive officer, or chief operating officer who has significant decisionmaking authority with respect to the proposed continuing care retirement community.

(j) If the applicant is an entity other than an individual, the following information also shall be submitted:

(1) A statement naming the type of legal entity and listing the interest and extent of the interest of each principal in the legal entity. For the purposes of this paragraph, "principal" means any person or entity having a 10 percent or more financial interest in the legal entity. When the application is submitted in the name of a corporation, the parent, sole corporate shareholder, or sole corporate member shall be listed as an applicant, when that parent, sole corporate shareholders, or sole corporate member controls the operation of the continuing care retirement community. When

multiple corporate applicants exist, they shall be listed jointly by corporate name on the application, and the certificate of authority shall be issued in the joint names of the corporations. When the application is submitted by a partnership, all general partners shall be listed as applicants and the certificate of authority shall be issued in the joint names of the general partners.

(2) The names of the members of the board of directors, the trustees, the general partners, or other responsible officers of the legal entity.

(3) A statement as to whether the applicant was or is affiliated with a religious, charitable, nonprofit or for-profit organization, and the extent of any affiliation. The statement shall also include the extent, if any, to which the affiliate organization will be responsible for the financial and contract obligations of the applicant and shall be signed by a responsible officer of the affiliate organization.

(4) A statement identifying any parent corporation or other affiliate corporation, the primary activities and the interest in the applicant held by each entity.

(5) Copies of all contracts, management agreements or other documents, setting forth the relationships of the entities.

(6) A statement as to whether the applicant, a principal, a parent, affiliate, or subsidiary corporation, or any other affiliate entity, or any responsible employee, manager, board member, or anyone who otherwise profits from the continuing care retirement community, has had applied against it, any injunctive or restrictive order of a court of record, or any suspension or revocation of any state or federal license, permit, or certificate, arising out of or relating to business activity of health or nonmedical care, including, but not limited to, actions affecting a license to operate a health care institution, a nursing home, an intermediate care facility, a hospital, or a home health agency, residential care facility for the elderly, community care facility, or child day care facility.

(k) A description of the business experience of the applicant in the operation or management of similar facilities.

(*l*) A copy of any advertising material regarding the proposed continuing care retirement community prepared for distribution or publication.

(m) Evidence of the bonds required by Section 1789.8.

(n) Copies of the proposed continuing care contracts to be entered into with residents of the continuing care retirement community.

(o) A copy of the proposed deposit subscription agreement form.

(p) The name of the proposed escrow agent and depository.

(q) Copies of all escrow agreements.

(r) A statement of any periodic fees to be paid by residents, the components and services considered in determining such fees, and the manner by which the provider may adjust these fees in the future. If the continuing care retirement community is already in operation,

or if the provider operates one or more similar continuing care retirement communities within this state, the statement shall include tables showing the frequency and each percentage increase in periodic rates at each continuing care retirement community for the previous five years, or such shorter period as each continuing care retirement community may have been operated by the provider or his or her predecessor in interest.

(s) A statement of the provisions that have been made, or will be made, to provide reserve funding or security by the provider to enable the provider to fully perform his or her obligations pursuant to continuing care contracts, including, but not limited to, the establishment of escrow accounts in financial institutions, trusts, or reserve funds.

(t) A copy of audited financial statements for the three most recent fiscal years of the applicant or any shorter period of time the applicant has been in existence, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report from a reputable firm of certified public accountants. The audited financial statements shall be accompanied by a statement signed and dated by both the chief financial officer and chief executive officer for the identified corporation, or by each general partner, that the financial statements are complete, true, and correct in all material matters to the best of their knowledge.

(u) Unaudited interim financial statements shall be included if the applicant's fiscal year ended more than 90 days prior to the date of filing. The statements shall be either quarterly or monthly, prepared on the same basis as the annual audited financial statements or other basis acceptable to the department. The period between the end of the most recent fiscal year for which audited financial statements are submitted and a date not more than 90 days prior to the date the application is filed shall be covered in the unaudited interim financial statements.

(v) A financial and marketing feasibility study prepared by a firm acceptable to the department. The study shall include or address, as appropriate, all of the following items:

(1) A narrative describing the applicant, its prior experience, qualifications, and management, including a descriptive analysis of the proposed continuing care retirement community and its service package, fee structure, and anticipated opening date.

(2) A narrative describing the financing and construction plans for the proposed continuing care retirement community, including a statement of the anticipated source and application of the funds to be used in the purchase, lease, rental, or construction. This statement shall include, but not be limited to, all of the following:

(A) A description of any mortgage loan or other long-term financing intended to be used for the financing of the continuing care retirement community, including the anticipated terms and costs of

the financing. This indebtedness shall not exceed the appraised value of the continuing care retirement community.

(B) Equity to be contributed by the applicant.

(C) Other sources of funds, including entrance fees, if applicable.

(D) An estimate of the cost of purchasing, leasing, renting, designing, or constructing and equipping the continuing care retirement community, including, but not limited to, such related costs as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs which the provider expects to incur, or become obligated for, prior to the commencement of operation.

(E) Interest expense, insurance premiums, and property taxes prior to opening.

(F) An estimate of any proposed continuing care retirement community reserves required for items such as debt service, insurance premiums, and operations.

(G) An estimate of any funds which are anticipated to be necessary to fund startup losses and to assure full performance of the obligations of the provider pursuant to continuing care contracts, including, but not limited to, any reserve fund escrow.

(3) An analysis of the potential market, addressing such items as:

(A) Service area, including its demographic, economic, and growth characteristics.

(B) Forecasts of penetration based on the proposed fee structure.

(C) Existing and planned competition in and about the primary service area.

(4) A detailed description of the sales and marketing plan, addressing such items as:

(A) Marketing schedule, anticipated sales, and cancellation rates.

(B) Month-by-month forecast of unit sales through sellout.

(C) A marketing plan describing the methods, staffing, and advertising media.

(D) An estimate of the total entrance fees to be received from residents prior to completion of occupancy.

(5) Projections of move-in rates, deposit subscription fee collections, couple mix by unit type, age distribution, care and nursing unit utilization, and unit turnover or resale rates.

(6) A description or analysis of development-period costs and revenues. This item should be provided to the department on a quarterly basis, throughout the development of the proposed continuing care retirement community.

(w) Projected annual financial statements for a period commencing on the first day of the first fiscal year, following the most recent year for which an audited financial statement has been provided, through at least the fifth year of operations.

(1) The projected annual financial statements shall be on an accrual basis using the same accounting principles and procedures as

the audited financial statements furnished pursuant to paragraph (u), but need not be audited.

(2) Separate projected annual cash-flow statements shall be provided. The statements shall cover the entire duration of debt, and be presented on a quarterly basis during the preopening, construction, and fill-up periods. If the real property is leased, the cash-flow statement shall project the feasibility of closing the continuing care retirement community at the end of the lease period.

(A) The projected annual cash-flow statements shall be submitted, using prevailing rates of interest, with no increase of revenues and expenses due to inflation, as one set of assumptions.

(B) The projected annual cash-flow statements shall include the following:

(i) A detailed listing, including a full explanation of all assumptions used in preparing the projections, plus supporting supplementary schedules and calculations, all to be consistent with the financial and marketing feasibility study furnished pursuant to paragraph (v), as may be required by the department for use in evaluating the feasibility of the proposed continuing care retirement community.

(ii) Cash-flows from monthly operations, including, but not limited to, monthly fees received from continuing care contracts, medical unit fees if applicable, other periodic fees, and gifts and bequests used in operations less operating expenses.

(iii) Contractual cash-flows from activities, including, but not limited to, presales, deposit subscription receipts, and entrance fee receipts less contract acquisition, marketing, and advertising expenditures.

(iv) Cash-flows from financing activities, including, but not limited to, bond or loan proceeds less bond issue or loan costs and fees, debt service including CAL Mortgage Insurance premiums, trustee fees, principal and interest payments, leases, contracts, rental agreements, or other long-term financing.

(v) Cash-flow from investment activities, including, but not limited to, construction progress payments, architect and engineering, furnishings, and equipment not included in the construction contract, project development, inspection and testing, marketable securities, investment earnings, and interfund transfers.

(vi) Increase or decrease in cash during the projection period.

(vii) The beginning cash balance, which means cash, marketable securities, reserves, and other funds on hand available and committed to the proposed continuing care retirement community.

(viii) Cash balance at the end of the period.

(ix) Details of the components of the ending cash balance shall be provided for each period presented, including, but not limited to, the ending cash balances for bond reserves, other reserve funds, deposit subscription funds, and construction funds balance.

(3) If the cash-flow statements required by paragraph (B) indicate that the provider will have cash balances over and above two

months' projected operating expenses of the continuing care retirement community, a description of the manner in which the cash balances will be invested, and the persons who will be making the investment decisions, shall accompany the application.

(4) The applicant shall furnish further explanatory information, schedules, and calculations as required by the department on actuarial data used to project occupancy rate, unit type and couple mix, sex, age, and turnover, refund, and sales rate subscription collection rates, a detailed operating budget, and projections of cash required for major repairs and improvements or on any other factor considered during the projected periods.

(x) A declaration acknowledging the requirement of executing and recording a Notice of Statutory Limitation on Transfer (hereinafter referred to as the notice), relating to continuing care retirement community property pursuant to this section.

(1) The notice shall be acknowledged so as to entitle it to be recorded, describe the property, declare the applicant's intention to use all or part of the described property for the purposes of a continuing care continuing care retirement community pursuant to this chapter, and shall be in substantially the following form:

NOTICE OF STATUTORY LIMITATION ON TRANSFER

Notice is hereby given that the property described below is licensed, or proposed to be licensed, for use as a continuing care retirement community and accordingly, the use and transfer of the property is subject to the conditions and limitations as to use and transfer set forth in Sections 1773 and 1789.4 of the Health and Safety Code. This notice is recorded pursuant to subdivision (x) of Section 1779.4 of the Health and Safety Code.

The real property, which is legally owned by (insert the name of the legal owner) and is the subject of the statutory limitation to which this notice refers, is more particularly described as follows: (Insert the legal description and the assessor's parcel number of the real property to which this notice applies.)

(2) The notice shall remain in effect until notice of release is given by the State Department of Social Services Continuing Care Contract Branch. The State Department of Social Services Continuing Care Contracts Branch shall execute and record a release of the notice upon proof of complete performance of all obligations to transferors.

(3) Unless a notice has already been recorded with respect to the land on which the applicant or provider is operating or intends to operate a continuing care retirement community, prior to the date of execution of any trust deed, mortgage, or any other lien or encumbrance, securing or evidencing the payment of money and affecting land on which the applicant or provider intends to operate a continuing care retirement community, the applicant or provider

shall give the department written notice of the proposed encumbrance. Upon the giving of notice to the department, the applicant or provider shall execute and record the Notice of Statutory Limitation on Transfer in the office of the county recorder in each county in which any portion of the continuing care retirement community is located.

(4) In the event that the applicant or provider and the owner of record are not the same entity or individual on the date on which execution and recordation of the notice is required, the applicant or provider shall serve a copy of the notice on the owner of record by certified mail.

(5) The notice shall be indexed by the recorder in the grantor-grantee index to the name of the owner of record and the name of the applicant or provider.

(y) A statement that the applicant will keep the department informed of any material changes to the proposed continuing care retirement community plan as reflected in the application form and attachments.

(z) Any other information as may be required by the department for the proper administration and enforcement of this chapter.

SEC. 18. Section 1779.6 of the Health and Safety Code is amended to read:

1779.6. (a) Within seven calendar days of receipt of an initial application for a permit to sell deposit subscriptions and certificate of authority, the department shall acknowledge receipt of the application in writing.

(b) Within 30 calendar days of receipt of an application, the department shall determine if the application is complete. This review need not include a review of the adequacy of the documentation submitted. Based on this review, the department shall do one of the following:

(1) Notify the applicant of additional forms, documents, information, or materials required to comprise a complete application and allow the applicant adequate time to submit the requested information or materials.

(2) Determine that the application is complete as submitted.

(c) Within 120 calendar days after the department determines that an application is complete, the department shall act to approve the application or determine the application is inadequate, notify the applicant of the specific deficiency and code references and give the applicant an opportunity to respond.

During this period, the department shall do all of the following:

(1) Review the application for adequacy.

(2) Review the application for compliance with this chapter.

(3) Review the financial plan for feasibility.

(4) If necessary, request expert consultants to review portions of the application and advise the department of their opinions.

(d) Within 30 calendar days after its receipt of any additional information or clarification required from the applicant, the department shall respond to the applicant's submission in writing, including its determination whether each specific deficiency has been addressed and whether the application is adequate. If the department determines that the application is adequate and in compliance with this chapter, the department shall act to issue the permit to sell deposit subscriptions. If the department determines that the response is inadequate, it may request additional information or clarification from the applicant pursuant to subdivision (c) or deny the application pursuant to Section 1779.10.

SEC. 19. Section 1779.8 of the Health and Safety Code is amended to read:

1779.8. (a) The applicant shall notify the department of material changes in the information submitted by the applicant to the department in the application materials.

(b) No less than 60 calendar days prior to an applicant making any changes in the applicant's corporate name, structure, organization, operation, or financing, the applicant shall give written notice of these proposed changes to the department. This notice requirement does not apply to mere facility staff changes.

(c) Within 30 calendar days after receiving notice of the proposed change, the department shall inform the applicant of any additional or amended information needed to process the pending application, or whether a new application and application fee must be submitted. The new application fee shall be twice the actual cost of additional consultant review time caused by the change. This additional fee is payable to the department on demand.

(d) Failure to give written notice of changes required by this section shall result in suspension of the permit to sell deposit subscriptions, pending the outcome of an investigation by the department into the effect of the changes on the interests of the subscribers.

SEC. 20. Section 1779.10 of the Health and Safety Code is amended to read:

1779.10. (a) The department shall deny an application for a permit to sell deposit subscriptions and certificate of authority if any of the following exists:

(1) Failure to pay the application fee as required by Section 1779.2.

(2) Failure to submit all information required by this chapter.

(3) Failure to submit evidence to support a reasonable belief that any principal of the proposed continuing care retirement community who has committed any offenses listed in subdivision (i) of Section 1779.4 is of such good character to indicate rehabilitation.

(4) If an action specified in subdivision (h) or (j) of Section 1779.4 has been taken against an applicant and the applicant has failed to submit evidence to support a reasonable belief that the applicant is

capable of administering the continuing care retirement community in compliance with applicable laws and regulations.

(5) Failure to demonstrate the feasibility of the proposed continuing care retirement community plan.

(b) If the application is denied, the previously paid application fee shall not be refunded.

(c) Immediately upon the denial of an application, the department shall notify the applicant in writing.

(d) The Notice of Denial from the department shall contain all of the following:

(1) State that the application is denied.

(2) List the reasons for the denial.

(3) Explain the right of appeal.

(4) State that the applicant has 30 calendar days from the date that the Notice of Denial was mailed to appeal the denial, and where to send the appeal.

(e) If the applicant appeals the denial, further proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 21. Section 1780 of the Health and Safety Code is amended to read:

1780. The department shall issue a permit to sell deposit subscriptions when it has:

(a) Determined that the application is complete.

(b) Determined that the proposed continuing care retirement community marketing and feasibility plans are acceptable.

(c) Reviewed and approved the deposit subscription agreement.

(d) Reviewed and approved the escrow agreement.

SEC. 22. Section 1780.2 of the Health and Safety Code is amended to read:

1780.2. (a) A deposit subscription may be made in one or several payments, to begin at the time the parties enter into the deposit subscription agreement.

A deposit subscription shall be paid by cash or cash equivalent, jointly payable to the applicant and the escrow agent or depository. Possession and control of any such instrument must be transferred to the escrow agent at the time the deposit is paid.

(b) A processing fee may be added to the deposit subscription.

(1) The processing fee shall not exceed one percent of the amount of the average entrance fee.

(2) A nonrefundable processing fee may be paid directly to the applicant without being placed in the escrow account.

(c) Payments made to the applicant from a subscriber for upgrades or modifications to the living unit shall not be placed in escrow with deposit subscriptions. Written refund policies shall be given to the subscriber.

SEC. 23. Section 1780.4 of the Health and Safety Code is amended to read:

1780.4. (a) All deposit subscription agreements entered into between the applicant and the subscriber shall be in writing and shall contain all information required by this section.

(b) All deposit subscription agreement forms shall be approved by the department prior to their use.

(c) The requirements of this chapter and Chapter 3.2 (commencing with Section 1569) shall be the bases for approval of the forms by the department.

(d) All text in deposit subscription agreement forms shall be printed in at least 10-point typeface.

(e) The deposit subscription agreement form shall provide for all of the following:

(1) An estimated date for commencement of construction of the proposed continuing care retirement community or each phase, if applicable, not to exceed 36 months from the date the permit to sell deposit subscriptions is issued.

(2) Identification of the specific unit subscribed to and the total deposit subscription for that unit.

(3) Processing fee terms and conditions, including:

(A) The amount.

(B) A statement explaining the applicant's policy regarding refund or retention of the processing fee in the event of death of the subscriber or voluntary cancellation by the subscriber.

(C) Notice that the processing fee shall be refunded within 30 days, in the event that the subscriber is not accepted for residency, or if the continuing care retirement community is not constructed by the estimated date of completion and the department determines that there is no satisfactory cause for the delay.

(4) Requirements for payment of the deposit subscription by the subscriber.

(5) Refund of the deposit subscription within 30 calendar days of notice of death of the subscriber or his or her nonacceptance for residency.

(6) Refund of the deposit subscription within 10 calendar days of notice of voluntary cancellation by the subscriber. A statement that once construction begins and until the continuing care retirement community is in operation, refunds shall be made only after another subscriber has reserved the specific unit and paid the necessary deposit subscription, or the subscriber no longer meets financial or health requirements for admission, whichever occurs first.

(7) A statement to subscribers that specifies when funds may be released from escrow and explains that thereafter subscriber funds will not have escrow protection.

(8) A statement regarding whether interest will be paid to the subscriber on deposit subscription funds placed in an escrow account.

(f) A schedule of projected monthly care fees estimated to be charged to residents for each of the first five years of the facility's existence shall be attached to each deposit subscription agreement. The schedule shall contain a conspicuous statement in at least 10-point boldface type that the projected fees are an estimate only and may be changed without notice.

SEC. 24. Section 1781 of the Health and Safety Code is amended to read:

1781. (a) All deposit subscriptions, excluding processing fees, shall be placed in an escrow account, the terms of which must be approved in advance by the department.

(b) The escrow account shall be established by an escrow agent and the deposit subscription deposited in a depository approved by the department and located in California. The funds deposited therein shall be kept and maintained in an account separate and apart from the applicant's business accounts.

(c) The escrow agent may be the same entity as the depository. If the escrow agent is a title company, it shall meet the following requirements:

(1) A Standard and Poors rating of "A" or better or a comparable rating from a comparable rating service.

(2) Licensure in good standing with the Department of Insurance.

(3) Tangible net equity as required by the Department of Insurance.

(4) Reserves as required by the Department of Insurance.

(d) Funds shall remain in escrow until the department has authorized their release in accordance with Section 1783.2.

(e) Deposit subscriptions shall be invested in instruments guaranteed by, or agencies of, the federal government or by investment funds secured by federally guaranteed instruments.

(f) No funds deposited in an escrow account shall be subject to any liens, judgments, garnishments, or creditor's claims against the applicant or continuing care retirement community. Neither shall these funds be subject to any liens or charges by the escrow agent, except transaction fees, commissions, prepayment penalties, and other fees incurred in connection with the payment of cash equivalent deposit subscriptions.

SEC. 25. Section 1781.2 of the Health and Safety Code is amended to read:

1781.2. (a) Payments pursuant to deposit subscriptions shall be deposited with the escrow agent within five business days after their receipt from subscribers and shall be accounted for in a separate escrow account.

(b) Deposits shall be accompanied by a copy of the executed deposit subscription agreement, a copy of the receipt given to the subscriber, a summary of all deposits made on that date, and any requirement of the escrow holder.

SEC. 26. Section 1781.4 of the Health and Safety Code is amended to read:

1781.4. The escrow agreement between the applicant and the escrow agent shall provide for all of the following:

(a) The amount of the processing fee.

(b) Deposit of funds in the escrow account.

(c) Monthly progress reports, beginning the month after the escrow account is opened and ending after funds are released from escrow, to be sent by the escrow agent directly to the department. These reports shall show each of the following in separate columns:

(1) The name and address of each subscriber or resident.

(2) The designation of the living unit being provided.

(3) Any processing fee which is deposited into escrow.

(4) The total deposit subscription for the unit.

(5) The total entrance fee for the unit.

(6) Twenty percent of the total entrance fee.

(7) Each payment made towards the deposit or refund given.

(8) The unpaid balance of each deposit subscription.

(9) The unpaid balance of each entrance fee.

(10) The current balance in the escrow account.

(11) The dollar amount, type, and maturity date of any cash equivalent.

(d) Investment of escrow account funds.

(e) Release of escrow account funds as specified in Section 1783.2, including to whom payment of interest earned on such funds will be made.

(f) The escrow agreement shall state that the escrow agent for the proposed continuing care retirement community shall neither be a lender nor have fiduciary responsibilities to lenders or bondholders for that continuing care retirement community.

SEC. 27. Section 1781.8 of the Health and Safety Code is amended to read:

1781.8. (a) As instructed by the applicant, funds placed in escrow accounts may be invested as provided under subdivision (d) of Section 1781.

(b) Earnings shall not be released except upon approval of the department.

(c) Approval by the department of the release of earnings from funds in escrow shall be based upon an assessment that funds remaining in the escrow account will be sufficient to pay refunds and interest promised, if any, to all subscribers, and all escrow agent administrative costs.

(d) Interest shall be distributed in accordance with the terms of the deposit subscription agreement.

SEC. 28. Section 1782 of the Health and Safety Code is amended to read:

1782. (a) An applicant shall not begin construction of a continuing care retirement community without the written

acknowledgment of the department that all of the following prerequisites have been met:

(1) A completed application has been submitted to the department.

(2) A permit to sell deposit subscriptions has been issued.

(3) At least 20 percent of each applicable entrance fee has been received for at least 50 percent of the number of residential living units to be constructed.

(A) Paragraph (3) shall apply to all applications that are submitted after May 31, 1995.

(B) For applications, and for those phases of the project that were identified as part of applications, submitted on or before May 31, 1995, at least 20 percent of each applicable entrance fee shall be received for at least 60 percent of residential units projected to be occupied six months after the continuing care retirement community is opened for operation.

(b) Applicants shall notify subscribers in writing of the commencement of construction.

(c) For purposes of this chapter only, construction shall not include site preparation or demolition.

SEC. 29. Section 1783 of the Health and Safety Code is amended to read:

1783. (a) No building, which has been constructed by the applicant or related parties without prior written approval of the department for commencement of construction, shall be permitted to be converted to a continuing care retirement community until five years have elapsed from the completion of construction. This section shall not apply to expansions of existing continuing care retirement communities.

(b) If existing buildings are to be converted to a continuing care use, the applicant shall comply with all application requirements necessary to assess the feasibility of the proposed continuing care retirement community as determined by the department pursuant to Section 1779.4; provided, however, that the department may waive or modify the presales requirements of subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Section 1783.2 and paragraph (2) of subdivision (a) of Section 1786 if the facility is already occupied. This section shall not apply to expansions of existing continuing care retirement communities.

(c) Any entity applying for conversion to a continuing care retirement community, unless qualified for a waiver or modification pursuant to subdivision (b), shall indicate the portion of the facility to be used for continuing care contracts. The continuing care allocation shall be used to determine the percentages in meeting requirements of the deposit subscription period pursuant to subdivision (b) of Section 1783.2 and Section 1786.

SEC. 30. Section 1783.2 of the Health and Safety Code is amended to read:

1783.2. (a) Refunds to subscribers shall be disbursed as follows:

(1) Except as provided in paragraph (2), the escrow agent shall pay refunds to subscribers who cancel a deposit subscription agreement, upon written notice to the escrow agent from the applicant, in accordance with the approved deposit subscription agreement. These refunds shall be paid within 10 days after the subscriber gives notice to the applicant.

(2) After notice to subscribers of commencement of construction, a subscriber shall not be entitled to a refund of deposit subscriptions until the continuing care retirement community is opened for operation, another subscriber has reserved the specific residential unit and paid the necessary deposit subscription, or the subscriber no longer meets financial or health requirements for admission, whichever occurs first.

(b) Releases to applicants shall be as follows:

(1) The applicant shall petition in writing to the department for the release of escrow, attesting to all of the following:

(A) The construction of the continuing care retirement community is at least 50 percent completed.

(B) At least 20 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 60 percent of the total number of residential living units. Any units for which a refund is pending cannot be counted towards that 60 percent requirement.

(C) All cash equivalent deposit subscriptions have been liquidated.

(D) The applicant's average performance over any six-month period substantially equals or exceeds its financial and marketing projections approved by the department, for that period.

(E) The applicant has received a commitment for any permanent mortgage loan or other long-term financing.

(2) The department shall instruct the escrow agent to release to the applicant all deposit subscriptions which have been placed in escrow pursuant to Section 1781 when all of the following requirements have been met:

(A) The department has confirmed the information provided by the applicant pursuant to paragraph (1) of subdivision (b).

(B) The department, in consultation with the Continuing Care Contracts Committee, has determined that there has been substantial compliance with projected annual financial statements, which served as a basis for issuance of the permit to sell deposit subscriptions.

(C) The applicant has complied with all applicable licensing requirements in a timely manner.

(D) The applicant has obtained a commitment for any permanent mortgage loan or other long-term financing that is satisfactory to the department.

(E) The applicant has complied with any additional reasonable requirements for release of funds placed in escrow accounts, established by the department pursuant to Section 1785.

SEC. 31. Section 1784 of the Health and Safety Code is amended to read:

1784. (a) If construction of the proposed continuing care retirement community, or applicable phase, has not commenced within 36 months from the date the permit to sell deposit subscriptions is issued, an applicant may request an extension of the permit to sell deposit subscriptions. The request for extension shall be made to the department in writing and shall include the reasons why construction of the proposed continuing care retirement community was not commenced within the 36-month time period, and the new estimated date for commencement of construction.

(b) In response to a request for an extension, the department may do one of the following:

(1) If the department determines there is satisfactory cause for the delay in commencement of construction of the proposed continuing care retirement community, the department may extend the permit to sell deposit subscriptions for a one-year period.

(2) If the department determines that there is no satisfactory cause for the delay, the department may instruct the escrow agent to refund to subscribers all deposit subscriptions held in escrow, plus any interest due under the terms of the deposit subscription agreements, and require the applicant to file a new application and application fee.

(c) Within 10 calendar days the applicant shall notify each subscriber of the department's approval or denial of the extension, of any expiration of the permit to sell deposit subscriptions, and of any right to a refund of their deposit subscription.

SEC. 32. Section 1785 of the Health and Safety Code is amended to read:

1785. (a) If, at any time prior to issuance of a certificate of authority, the applicant's average performance over any six-month period does not substantially equal or exceed the applicant's projections for that period, the department, after consultation and upon consideration of the recommendations of the Continuing Care Contracts Committee, may take any of the following actions:

(1) Cancel the permit to sell deposit subscriptions.

(2) Increase the required percentages of construction completed, units reserved, or entrance fees to be deposited as required under Sections 1782, 1783.2, 1786, and 1786.2.

(3) Increase the reserve requirements under this chapter.

(b) Prior to taking any actions specified in subdivision (a), the department shall give the applicant an opportunity to submit a feasibility study from a consultant in the area of continuing care, approved by the department, to determine whether in his or her opinion the proposed continuing care retirement community is still

viable, and if so, to submit a plan of correction. The department, in consultation with the committee, shall determine if the plan is acceptable.

(c) In making its determination, the department shall take into consideration the overall performance of the proposed continuing care retirement community to date.

(d) If deposit subscriptions have been released from escrow, the department may further require the applicant to reopen the escrow as a condition of receiving any further entrance fee payments from subscribers or residents.

SEC. 33. Section 1786 of the Health and Safety Code is amended to read:

1786. (a) In order to permit an applicant to become a provider and enter into continuing care contracts, the department shall issue a provisional certificate of authority when a provider has done all of the following:

(1) Complied with the approved marketing plans.

(2) Met and continues to meet the requirements imposed under subdivision (b) of Section 1783.2. The issuance of the provisional certificate of authority does not result in the automatic release of escrowed funds pursuant to Section 1783.2.

(3) Completed construction of the continuing care retirement community or applicable phase.

(4) Obtained the required licenses.

(5) Paid the remainder of the application fees.

(6) Executed a permanent mortgage loan or other long-term financing.

(7) Met all applicable provisions of this chapter.

(b) The provisional certificate of authority shall expire 12 months after issuance unless the following occur:

(1) Sixty days prior to the expiration of the provisional certificate of authority, the provider petitions the department in writing for an extension of the provisional certificate of authority.

(2) Upon a showing of good cause by the provider, the department determines that the applicant is capable of meeting the requirements of Section 1786.2 during the period of extension.

(c) The length of the period of extension shall be determined at the department's discretion.

(d) After the provisional certificate of authority is issued providers may continue to take deposits by modifying the deposit subscription agreement. The new deposit agreement shall clearly state the rights of the depositor and the provider. These agreements shall be submitted to the department for review and approval prior to use.

(e) All holders of a provisional certificate of authority shall request in writing a final certificate of authority when the requirements of Section 1786.2 have been met.

SEC. 34. Section 1786.2 of the Health and Safety Code is amended to read:

1786.2. (a) A certificate of authority shall not be issued to a provider, unless the department determines that all of the following have occurred:

(1) A provisional certificate of authority has been issued.

(2) One of the following requirements has been met:

(A) At a minimum, continuing care contracts have been executed for 80 percent of the total residential living units in the continuing care retirement community, with payment in full of the entrance fee.

(B) At a minimum, continuing care contracts have been executed for 70 percent of the total residential living units in the continuing care retirement community, with payment in full of the entrance fee, and the provider has submitted a financial and marketing plan, satisfactory to the department, demonstrating that the proposed continuing care retirement community will be financially viable.

(C) At a minimum, continuing care contracts have been executed for 50 percent of the total residential living units in the continuing care retirement community, with payment in full of the entrance fee, and the provider furnishes and maintains a letter of credit or other security, satisfactory to the department, sufficient to bring the total amount of payments to a level equivalent to 80 percent of the total entrance fees for the entire continuing care retirement community.

(3) A minimum five-year financial plan of operation remains satisfactory to the department.

(4) Adequate reserves exist as required by Sections 1792.2 and 1793. For a new continuing care retirement community without an operating history, the department may approve calculation of required reserves on a pro forma basis in conjunction with compliance with approved marketing plans.

(5) All applicable provisions of this chapter have been met.

(b) When issued, the certificate of authority, whether full or conditioned, shall remain in full force unless inactivated, suspended, or revoked by the department pursuant to Section 1793.21.

(c) The certificate of authority shall be displayed in a prominent place within the continuing care retirement community.

SEC. 35. Section 1787 of the Health and Safety Code is amended to read:

1787. (a) All continuing care contracts entered into between the provider and the transferor shall be in writing and shall contain all information required by Section 1788.

(b) All continuing care contract forms, addenda, exhibits, or any other related documents, and any revisions thereto, shall be approved by the department prior to their use.

(c) The requirements of this chapter and Chapter 3.2 (commencing with Section 1569) shall be the bases for approval by the department.

(d) The continuing care contract shall constitute the full and complete agreement between the parties.

(e) More than one continuing care contract form may be used if multiple program options are available.

(f) All text in continuing care contract forms shall be printed in at least 10-point typeface.

(g) A clearly legible copy of the continuing care contract, executed by the provider and a transferor, shall be furnished, with all required or included attachments to the transferor at the time the continuing care contract is executed and shall be furnished within 10 calendar days to the resident if the resident is other than the transferor.

(h) The provider shall require a written acknowledgment from the transferor (and the resident, if other than the transferor) that the executed copy of the continuing care contract and attachments have been received.

(i) The continuing care contract shall constitute an admissions agreement for purposes of the residential care facility for the elderly and long-term health care facility requirements. The continuing care contract may state the entitlement for skilled nursing care in accordance with the provisions of law governing admissions to long-term health care facilities in effect at the time of admission to the skilled nursing facility. The parties may agree to the terms of nursing facility admission at the time the continuing care contract is executed, or the provider may present an exemplar of the then-current nursing facility admission agreement and require the resident to execute the form of agreement in effect at the time of admission to the nursing facility. These terms shall include the nursing fee, or the method of determining the fee, at the time of the execution of the continuing care agreement, the services included in and excluded from the fee, the grounds for transfers and discharges, and any other terms required to be included under federal law.

(j) Only the skilled nursing admission agreement sections of continuing care contracts which cover long-term health care facility services shall be subject to Chapter 3.95 (commencing with Section 1599.60). The provider must submit the proposed skilled nursing admission agreement to the State Department of Health Services for its review and to the State Department of Social Services for review to determine that it is not in violation of the laws relating to continuing care contracts.

SEC. 36. Section 1788 of the Health and Safety Code is amended to read:

1788. (a) Any continuing care contract shall contain all of the following:

(1) The legal name and address of the provider.

(2) The name and address of the continuing care retirement community.

(3) The resident's name and number of the unit to be occupied.

(4) If the transferor is someone other than the resident, the transferor's name and address shall be separately designated.

(5) If the provider has used the name of any charitable or religious or nonprofit organization in its title before January 1, 1979, and continues to use that name, and that organization is not responsible for the financial and contractual obligations of the provider, the provider shall include in every continuing care contract a conspicuous statement which clearly informs the transferor that the organization is not financially responsible.

(6) The date the continuing care contract is signed by the transferor.

(7) The duration of the continuing care contract.

(8) A list of the following services that are to be made available to the resident, which shall include at a minimum, the following conditions for residential care facility for the elderly licensure:

(A) Regular observation of the resident's health status to ensure that his or her dietary needs, social needs, and needs for special services are satisfied.

(B) Safe and healthful living accommodations, including housekeeping services and utilities.

(C) Maintenance of house rules for the protection of residents.

(D) A planned activities program, which includes social and recreational activities appropriate to the interests and capabilities of the resident.

(E) Three balanced, nutritious meals and snacks made available daily, including special diets prescribed by a physician as a medical necessity.

(F) Personal care.

(G) Assistance with taking medications.

(H) Central storing and distribution of medications.

(I) Arrangements to meet health needs, including arranging transportation.

(9) An itemization of the services that are included in the monthly fee and the services that are available at an extra charge. The provider shall attach a current fee schedule to the continuing care contract.

(10) The procedures and conditions under which residents may be voluntarily or involuntarily transferred from their designated living units. The transfer procedures, at a minimum, shall provide for all of the following:

(A) When, in the opinion of the continuing care retirement community management, a physician and surgeon, appropriate specialist, or licensing official, any of the following conditions exists:

(i) The resident is nonambulatory. The definition of nonambulatory, as defined in Section 13131, shall either be stated in the continuing care contract or be cited, with a copy of it made available, as an attachment or by specifying that it will be provided upon request. If the resident occupies a room that has a fire clearance for nonambulatory residence, provision for transfer under the above circumstances is unnecessary.

(ii) Resident develops a physical or mental condition that endangers the health, safety, or well-being of the resident or another person, or causes an unreasonable and ongoing disturbance at the continuing care retirement community.

(iii) Transfer to the continuing care retirement community's skilled nursing facility or personal care unit is required for more efficient care and/or to protect the health of other residents, or because the level of care needed cannot lawfully be provided in the living unit.

(iv) Transfer to a nursing home or hospital or other facility is required and the provider has no facilities available for such care.

(B) Provision for transfer of a second resident when a shared accommodation arrangement is terminated.

(C) When transfer is requested or required, by provider or resident, for any other reason.

(11) Provisions for any change in the monthly rate and any refund of entrance fees when a resident transfers from any unit.

(12) Any continuing obligations of the provider in the event a resident is transferred.

(13) Whether the provider has any responsibility to resume care after a temporary transfer.

(14) The obligations of the provider for continued services to the resident while the resident is absent from the continuing care retirement community.

(15) The conditions under which the resident permanently releases his or her living unit.

(16) If real or personal properties are transferred in lieu of cash, a statement as to their value at the time of transfer, and how the value was ascertained shall be included.

(A) An itemized receipt which includes the information described above is acceptable, if incorporated as a part of the continuing care contract.

(B) With respect to the transfer of real property, a statement that the deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to a "continuing care contract" and may be subject to rescission by the transferor within 90 days from the date of the transfer.

(C) The failure to comply with paragraph (16) shall not affect the validity of title to real property transferred pursuant to this chapter.

(17) The amount of the entrance fee.

(18) In the event two parties have jointly paid the entrance fee or other payment which allows them to occupy the unit, the continuing care contract shall define the allocation of fees.

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

(21) For continuing care contracts which require a monthly care fee or other periodic rate, the continuing care contract shall provide statements concerning all of the following:

(A) That the occupancy and use of the accommodations by the resident is contingent upon the regular payment of the fee.

(B) The regular rate of payment agreed upon (per day, week, or month).

(C) Whether payment will be made in advance or after services have been provided.

(D) Whether any adjustment in the monthly care fees is to be made by the provider for the support, maintenance, board, or lodging, which is supplied to a resident who requires medical attention when he or she is absent from the continuing care retirement community.

(E) If any credit or allowance is to be given to a resident who is absent from the continuing care retirement community or from meals, and if such credit is to be permitted at the discretion or by special permission of the provider.

(22) All continuing care contracts shall specify one of the following basic methods for calculating changes in monthly care fees:

(A) For prepaid continuing care contracts, which include monthly care fees, one of the following methods:

(i) Fees shall not be subject to change during the lifetime of the agreement.

(ii) Fees shall not be increased by more than a specified number of dollars in any one year and not more than a specified number of dollars during the lifetime of the agreement.

(iii) Fees shall not be increased in excess of a specified percentage over the preceding year and not more than a specified percentage during the lifetime of the agreement.

(B) For monthly fee continuing care contracts, except prepaid contracts, changes in monthly fees shall be based on projected costs, prior year per capita costs, and economic indicators.

(23) The continuing care contract shall provide for notification of the resident at least 30 days in advance of any change in the scope or price of any component of care or other services.

(24) The continuing care contract shall include a provision indicating whether the resident's rights under the continuing care contract include any proprietary interests in the assets of the provider or in the continuing care retirement community, or both.

(25) If there is a loan on the property, the continuing care contract shall advise residents that rights they may have to enforce continuing care contracts are subordinate to the rights of the lender. For equity projects, the continuing care contract shall specify the type and extent of the equity interest and whether any entity holds a superior security interest.

(26) Notice that the living units are part of a continuing care retirement community that is licensed as a residential care facility for the elderly and, as such, any duly authorized agent of the department may, upon proper identification and upon stating the purpose of his

or her visit, enter and inspect the entire premises at any time, without advance notice.

(27) A conspicuous statement, in at least 10-point boldface type in immediate proximity to the space reserved for the signature of the transferor, that provides as follows: "You, the transferor, may cancel the transaction without cause at any time within 90 days from the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(28) Notice that during the cancellation period, the continuing care contract may be canceled by the provider without cause.

(29) The terms and conditions under which the continuing care contract may be terminated after the cancellation period by either party, including any health or financial conditions.

(30) A statement that involuntary termination of the continuing care contract by the provider after the cancellation period shall be only for good and sufficient cause.

(A) Any continuing care contract containing a clause that provides for a resident to be evicted, or provides for a continuing care contract to be canceled for "just cause," "good cause," or other similar provision, shall also include a provision that none of the following activities by the resident, or on behalf of the resident, constitutes "just cause," "good cause," or otherwise activates the eviction or cancellation provision:

(i) Filing or lodging a formal complaint with the department or other appropriate authority.

(ii) Participation in an organization or affiliation of residents, or other similar lawful activity.

(B) No provider shall discriminate or retaliate in any manner against any resident of a continuing care retirement community for contacting the department, or any other state, county, or city agency, or any elected or appointed government official to file a complaint or for any other reason, or for participation in a residents' coalition.

(C) Nothing in this provision shall diminish the provider's ability to terminate the continuing care contract for good and sufficient cause.

(31) A statement that at least 90 days written notice is required for an involuntary termination of the continuing care contract.

(32) A statement concerning the length of notice that is required by a resident for the voluntary termination of the continuing care contract after the cancellation period.

(33) The policy for refunding any portion of the entrance fee, in the event of cancellation, termination, or death.

(34) The following notice at the bottom of the signatory page:

"NOTICE" (date)

This is a continuing care contract as defined by Section 1771(j) or 1771(w) of Chapter 10 of Division 2 of the California Health and

Safety Code. This contract form has been approved by the State Department of Social Services as required by Section 1787 (b) of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has complied with specific requirements of the statutes. Approval by the department is neither a guaranty of performance nor an endorsement of contract provisions. Prospective transferors and residents are encouraged to carefully consider the benefits and risks of this contract before signing. You should seek financial and legal advice as needed.

(b) A life care contract shall also include all of the following:

(1) Provision to provide all levels of care, including acute care and physicians and surgeons' services to a resident.

(2) Provision to provide this care for the duration of the resident's life except for termination of the life care contract by the provider during the cancellation period or after the cancellation period for good cause.

(3) Provision to provide a comprehensive continuum of care, including skilled nursing, under the ownership and supervision of the provider on, or adjacent to, the continuing care retirement community premises.

(4) Provision that no change will be made in the monthly care fees based on the resident's level of care or service.

(5) Provision to subsidize residents who become financially unable to pay their monthly care fees provided that the resident's financial need did not arise from the action to divest themselves of their assets.

(c) The continuing care contract may include, but is not limited to, and need not include, any of the following items:

(1) Provision for a resident who becomes financially unable to pay for his or her monthly care fees at some future date to be subsidized. If provision for subsidizing a resident is included, the following provisions may be included:

(A) A stipulation that the resident shall apply for any public assistance or other aid for which eligible and that the provider may apply on behalf of the resident.

(B) A stipulation that the provider shall be the final and conclusive determining body of any adjustments to be made or any action to be taken regarding any charitable consideration to be extended to any of its residents.

(C) Provision for the payment or entitlement of actual costs of care from any property acquired by the resident subsequent to the adjustment, as provided in subparagraph (B), or from any property not disclosed by the resident at any time.

(D) Provision that the provider may pay the monthly premium of the resident's health insurance coverage under medicare to ensure that such payments will be made.

(E) Provision that the provider may receive an assignment from the resident of the right to apply for and to receive such benefits, for and on behalf of the resident.

(F) Provision that the provider is not responsible for the costs of furnishing the resident with any services, supplies, and medication, when reimbursement is available from any governmental agency.

(2) Provisions which limit responsibility for costs associated with the treatment or medication of an ailment or illness existing prior to the date of admission. In such cases, the medical or surgical exceptions, as disclosed by the medical entrance examination, shall be listed in the continuing care contract or in the medical report, which may be attached to and made a part of the continuing care contract.

(3) Legal remedies which may be applied in case any material misrepresentation or omission pertaining to assets or health has been made by the resident.

(4) A clause which restricts transfer or assignments of the resident's rights and privileges under a continuing care contract because of the personal nature of the continuing care contract.

(5) A clause for the protection of the provider in instances where it may wish to waive any of the terms or provisions of the continuing care contract in specific instances where the resident has breached the continuing care contract without relinquishment of its right to insist upon compliance by the resident with all of the other terms or provisions.

(6) Provision for the reimbursement of any loss or damage beyond normal wear and tear suffered by the provider as the result of carelessness or negligence on the part of the resident.

(7) Provision that the resident agrees to observe off-limit areas of the continuing care retirement community as designated by the provider for safety reasons. However, the provider shall not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect.

(8) Provision for the subrogation to the provider of the resident's rights in the case of injury to a resident caused by the acts or omissions of a third party, or for the assignment of the resident's recovery or benefits in this case to the provider to the extent of the value of the goods and services furnished by the provider to or on behalf of the resident.

(9) Provision for a lien on any judgment, settlement, or recovery for any additional expense incurred by the provider in caring for the resident as a result of injury.

(10) Provision that requires the cooperation of the resident in assisting in the diligent prosecution of any claim or action against any third party.

(11) Provision for the appointment of a conservator or guardian by a court of competent jurisdiction in the event a resident becomes unable to handle his or her personal or financial affairs.

(12) Provision that, in the event a provider whose property is tax-exempt is required to pay property taxes, or in-lieu taxes, the additional costs will be charged to the resident on a pro rata basis.

(13) Other provisions approved by the department.

(d) A copy of the current audited financial statement of the provider shall be attached to every continuing care contract. For a provider whose current audited financial statement does not accurately reflect the financial ability of the provider to fulfill the continuing care contract promises, this requirement shall include supplemental statements or attachments that disclose all of the following:

(1) That the reserve requirement has not yet been determined or met, and that entrance fees will not be held in escrow.

(2) That the ability to provide the services promised in the continuing care contract will depend on successful compliance with the approved financial plan.

(3) The approved financial plan for meeting the reserve requirements.

(e) A schedule of the average monthly fees for each type of residential living unit charged to residents for each of the five years preceding execution of the continuing care contract shall be attached to every continuing care contract. This schedule shall be updated annually at the end of each fiscal year. If the continuing care retirement community has not been in existence for five years, the information shall be provided for each of the years the continuing care retirement community has been in existence.

(f) If any continuing care contract provides for a health insurance policy for the benefit of the resident, a binder under Sections 382 and 382.5 of the Insurance Code shall be attached to the continuing care contract.

(g) A completed form in duplicate, captioned "Notice of Cancellation" shall be attached to every continuing care contract. Such notice shall be easily detachable, and shall contain, in at least 10-point boldface type, the following statement:

"NOTICE OF CANCELLATION" (date)

(Enter date of transaction)

You may cancel this transaction, without any penalty within 90 calendar days from the above date.

If you cancel, any property transferred, any payments made by you under the contract, and any negotiable instrument executed by you will be returned within 14 calendar days after making possession of the living unit available to the provider, and any security interest arising out of the transaction will be canceled.

If you cancel, you are obligated for a reasonable processing fee to cover costs and the reasonable value of the services received by you

from the provider up to the date you canceled or made available to the provider the possession of any living unit delivered to you under this contract, whichever is later.

If you cancel, you must return possession of any living unit delivered to you under this contract to the provider in substantially the same condition as when received.

Possession of the living unit must be made available to the provider within 20 calendar days of your notice of cancellation. If you fail to make the possession of any living unit available to the provider, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____
(Name of provider)

at _____
(Address of provider's place of business)

not later than midnight of _____ (date).

I hereby cancel this transaction _____
(Transferor's signature)

SEC. 37. Section 1788.2 of the Health and Safety Code is amended to read:

1788.2. (a) The continuing care contract may be canceled without cause by written notice from either party, within 90 days from the date of the transaction.

(b) For both equity and nonequity projects, death of the resident during the cancellation period shall constitute a cancellation of the continuing care contract under subdivision (a), unless a continuing care contract includes specific provisions otherwise.

(c) The cancellation period and the refund of obligations associated therewith shall apply as follows:

(1) To all continuing care contracts executed in conjunction with nonequity continuing care retirement communities.

(2) To continuing care contracts executed in conjunction with a purchase of an equity interest from a provider but not to continuing care contracts executed in conjunction with sales of an equity interest by one transferor to another.

(d) The following fees may be charged during the 90-day cancellation period:

(1) If possession of the living unit in a nonequity project is returned to the provider in substantially the same condition as when received, the only obligation incurred by the resident shall be a

reasonable fee to cover costs and the reasonable value of services rendered pursuant to the canceled continuing care contract.

(2) Equity project providers may impose a transfer fee on sellers. For contracts entered into after January 1, 1996, those transfer fees are subject to the following limitations:

(A) Upon the cancellation of a continuing care contract executed in conjunction with the purchase of an equity interest from the provider, the provider may charge a transfer fee not to exceed the excess of the gross resale price of the equity interest over the purchase price paid by the transferor for the interest.

(B) Upon the cancellation of a continuing care contract that is not executed in conjunction with the purchase of an equity interest from the provider, the transfer fee shall be no greater than the sum of 10 percent of either the original or resale price of the equity interest and 100 percent of the excess, if any, of the gross resale price of the equity interest over the purchase price paid by the transfer for the interest.

(e) Upon the termination of a continuing care contract that occurs more than 90 days after the purchase of the equity interest from the provider, the transfer fee shall be no greater than the sum of 10 percent of either the original or resale price of the equity interest and 100 percent of the excess if any, of the gross resale price of the equity interest over the purchase price paid by the transferor for the interest.

(f) For purposes of this section, "gross resale price" means the resale price before any deductions for transfer fees, transfer taxes, real estate commissions, periodic fees, late charges, interest, escrow fees, or any other fees incidental to the sale of real property.

(g) This section shall not be construed to limit the provider's ability to withhold delinquent periodic fees, late charges, accrued interest, or assessments from the sale proceeds, as provided by the continuing care contract or the real estate documents governing the equity facility.

SEC. 38. Section 1788.3 of the Health and Safety Code is repealed.

SEC. 39. Section 1788.4 of the Health and Safety Code is amended to read:

1788.4. (a) Except during the cancellation period any refunds due pursuant to the continuing care contract shall be paid within 14 calendar days after a resident makes possession of the living unit available to the provider, or within 90 calendar days after cancellation, death, or receipt of notice of termination, whichever is later.

(b) In nonequity projects, if the provider terminates the continuing care contract, the transferor shall be refunded the difference between the total amount of entrance, monthly, and optional fees paid and the amount used for care of the resident.

(c) When additional fees have been paid for unit upgrades, these charges shall amortize at the same rate as the entrance fee. The transferor shall be refunded the unamortized balance.

SEC. 40. Section 1789 of the Health and Safety Code is amended to read:

1789. (a) Proposed changes of entity name, structure, organization, operation, overall management of the continuing care retirement community, or financing shall be submitted to the department for review and approval.

(b) The provider shall give written notice of proposed changes to the department no less than 60 calendar days prior to making changes.

(c) This notice requirement does not apply to routine facility staff changes.

SEC. 40.5. Section 1789.2 of the Health and Safety Code is amended to read:

1789.2. (a) Any provider contemplating capital financing that would entail a mortgage or deed of trust for any property on which a resident resides pursuant to a continuing care contract shall provide the department with written notification at least 90 calendar days prior to the execution of the proposed transaction which includes all of the following:

(1) A description of the terms and amount of the proposed transaction.

(2) An analysis of the sources of funds for repayment of principal and interest.

(3) An analysis of the impact of the proposed transaction on monthly care fees.

(4) An analysis of the impact that the contemplated encumbrance of real property would have on assets available for statutory reserves required by Section 1792.2, and refund reserves required by Section 1793.

(b) No provider shall execute proposed capital financial transactions without the department's written authorization or until the 90 calendar day period for departmental review has expired.

(c) If the department determines that the proposed capital financial transaction will materially increase monthly fees or impair the provider's ability to maintain required reserves, the department may refuse to approve the transaction, may record a notice of lien on the provider's property pursuant to Section 1793.15, after notifying the provider and giving the provider an opportunity to withdraw the planned transaction, or take any other action that it determines to be in the best interest of the residents.

SEC. 41. Section 1789.4 of the Health and Safety Code is amended to read:

1789.4. (a) Any provider who proposes to sell or transfer ownership of a continuing care retirement community to another party shall obtain approval from the department before consummating the sale or transfer.

(b) The provider shall submit written notification to the department at least 90 calendar days prior to execution of the

proposed transaction. The notification shall include all of the following:

(1) Identification of the proposed purchaser.

(2) A description of the terms and amount of the proposed transaction.

(3) A plan detailing how fulfillment of existing contract obligations will be ensured.

(c) The provider shall give written notice to all continuing care contract residents and subscribers 60 calendar days prior to the sale or transfer. The notice shall include all of the following:

(1) A description of the parties.

(2) A description of the proposed sale or transfer.

(3) A description of the arrangements for fulfilling continuing care contract obligations.

(4) A description of options available to any subscriber or resident who does not wish to have his or her contract assumed by a new provider.

(5) An acknowledgment of receipt of the notice to be signed by the resident.

(d) In the absence of the substitution of a new legal obligor for the provider, the provider shall set up a trust fund or secure a performance bond to ensure the fulfillment of continuing care contract obligations.

(e) The new owner shall make applications for, and obtain a certificate of authority and appropriate licenses, before executing any continuing care contracts, or providing care or supervision, or both, to any residents.

SEC. 42. Section 1789.6 of the Health and Safety Code is amended to read:

1789.6. All providers shall record and maintain a "Notice of Statutory Limitation on Transfer" as required by paragraph (24) of subdivision (a) of Section 1779.4.

SEC. 43. Section 1789.8 of the Health and Safety Code is amended to read:

1789.8. Each provider shall obtain and maintain in effect insurance or a fidelity bond for any agent or employee, who, in the course of his or her agency or employment, has access to any substantial amount of funds. This requirement is separate from the bonding requirements of Residential Care Facility for the Elderly regulations.

SEC. 44. Section 1790 of the Health and Safety Code is amended to read:

1790. (a) Each provider, that has obtained a provisional or final certificate of authority, and each provider that possesses an inactive certificate of authority, shall submit an annual report of its financial condition. The report shall consist of audited financial statements and required reserve calculations, with accompanying certified public accountants' opinions thereon, Continuing Care Provider Fee and

Calculation Sheet, resident listings, evidence of fidelity bond as required by Section 1789.8, and certification that the continuing care contract in use for new residents has been approved by the department, all in a format provided by the department, and shall include all of the following information:

(1) A certification, if applicable, that the entity is maintaining reserves for prepaid continuing care contracts, statutory reserves, and refund reserves.

(2) Full details on the status of reserves and on per capita costs of operation for each continuing care retirement community operated.

(3) Full details on any increase in monthly care fees, the basis for determining the increase, and the data used to calculate the increase.

(4) The required reserve calculation schedules shall be accompanied by the auditor's opinion as to compliance with applicable statutes.

(5) Any other information as the department may require.

(b) Each provider shall file the annual report with the department within four months after the provider's fiscal year end. If the complete annual report is not received by the due date, a one thousand dollar ($1,000) late fee shall accompany submission of the reports. If the reports are more than 30 days past due, an additional fee of thirty-three dollars ($33) for each day over the first 30 days shall accompany submission of the report. The department may, at its discretion, waive the late fee for good cause.

(c) The annual report and any amendments thereto shall be signed and certified by the chief executive officer of the provider, stating that, to the best of his or her knowledge and belief, the items are correct.

(d) A copy of the most recent annual audited financial statement shall be transmitted by the provider to each transferor requesting the statement.

(e) A provider shall amend its annual report on file with the department at any time, without the payment of any additional fee, if an amendment is necessary to prevent the report from containing a material misstatement of fact or omitting a material fact.

(f) If a provider is no longer entering into continuing care contracts, and currently is caring for 10 or fewer continuing care residents, the provider may request permission from the department, in lieu of filing the annual report, to establish a trust fund or to secure a performance bond to ensure fulfillment of continuing care contract obligations. The request shall be made each year within 30 days after the provider's fiscal year end. The request shall include the amount of the trust fund or performance bond determined by calculating the projected life costs, less the projected life revenue, for the remaining continuing care residents in the year the provider requests the waiver. If the department approves the request, the following shall be submitted to the department annually:

(1) Evidence of trust fund or performance bond and its amount.

(2) A list of continuing care contract residents. If the number of continuing care residents exceeds 10 at any time, the provider shall comply with the requirements of this section.

(3) A provider fee as required by subdivision (c) of Section 1791.

(g) If the department determines a provider's annual audited report needs further analysis and investigation, as a result of incomplete and inaccurate financial statements, significant financial deficiencies, development of work out plans to stabilize financial solvency, or for any other reason, the provider shall reimburse the department for reasonable actual costs incurred by the department or its representative. The reimbursed funds shall be deposited in the Continuing Care Contract Provider Fee Fund.

SEC. 45. Section 1791 of the Health and Safety Code is amended to read:

1791. (a) An annual fee shall be required of each provider which has obtained a provisional or final certificate of authority.

(b) Each annual report submitted pursuant to Section 1790 shall be accompanied by a payment to the Continuing Care Provider Fee Fund in the amount of one-tenth of 1 percent of the portion of total operating expenses, excluding debt service and depreciation from audited financial statements, which has been allocated to continuing care contract residents. The allocation shall be based on the ratio of the mean number of total residents.

(c) If a provider is granted an exemption from filing annual reports to the department pursuant to subdivision (f) of Section 1790, the minimum annual provider fee shall be two hundred fifty dollars ($250). This fee shall be submitted after the end of the provider's fiscal year with proof of trust fund or performance bond as required by subdivision (f) of Section 1790.

SEC. 46. Section 1792 of the Health and Safety Code is amended to read:

1792. (a) Any provider furnishing care pursuant to a prepaid continuing care contract executed after January 1, 1979, shall establish a reserve fund escrow account with an escrow agent, in an amount which equals the aggregate principal and interest, rental, or lease payments due during the next 12 months on account of any first mortgage or other long-term financing of the continuing care retirement community or any leases or other rental agreement for a continuing care retirement community.

(b) The principal of the escrow account may be invested, as provided in subparagraphs (A) through (E), inclusive, of paragraph (3) of subdivision (e) of Section 1792.2 concerning investment of reserve funds, with the earnings thereon payable to the provider.

(c) Amounts not to exceed in the aggregate one-sixth of the total principal may be released to the provider upon notice to the department.

(d) Submit a copy of the executed escrow agreement that provides all of the following:

(1) That upon withdrawal of any amount by the provider, the escrow agent shall provide immediate written notice of the withdrawal to the department.

(2) That any amount released to the provider shall be repaid to the escrow account within two years of the release of the amount.

(3) That if the provider does not repay the escrow account within the two-year period, the escrow agent shall provide immediate written notice to the department.

(e) In the event of a change of escrow agent, the new escrow agreement shall be submitted to the department.

SEC. 47. Section 1792.2 of the Health and Safety Code is amended to read:

1792.2. (a) Any entity that has executed or assumed continuing care contracts shall maintain reserves covering obligations thereunder.

(b) The following assumptions shall be used when calculating the reserves:

(1) The following life expectancy table shall be used in connection with all continuing care contracts:

Age	Females	Males	Age	Females	Males
55	26.323	23.635	83	7.952	6.269
56	25.526	22.863	84	7.438	5.854
57	24.740	22.101	85	6.956	5.475
58	23.964	21.350	86	6.494	5.124
59	23.199	20.609	87	6.054	4.806
60	22.446	19.880	88	5.613	4.513
61	21.703	19.163	89	5.200	4.236
62	20.972	18.457	90	4.838	3.957
63	20.253	17.764	91	4.501	3.670
64	19.545	17.083	92	4.175	3.388
65	18.849	16.414	93	3.862	3.129
66	18.165	15.759	94	3.579	2.903
67	17.493	15.116	95	3.329	2.705
68	16.832	14.486	96	3.109	2.533
69	16.182	13.869	97	2.914	2.384
70	15.553	13.268	98	2.741	2.254
71	14.965	12.676	99	2.584	2.137
72	14.367	12.073	100	2.433	2.026
73	13.761	11.445	101	2.289	1.919
74	13.189	10.830	102	2.152	1.818
75	12.607	10.243	103	2.022	1.723
76	12.011	9.673	104	1.899	1.637
77	11.394	9.139	105	1.784	1.563

78	10.779	8.641	106	1.679	1.510
79	10.184	8.159	107	1.588	1.500
80	9.620	7.672	108	1.522	1.500
81	9.060	7.188	109	1.500	1.500
82	8.501	6.719	110	1.500	1.500

The life expectancy table set forth in this paragraph shall be used until this section is amended.

(2) For residents over 110 years of age use 1.500 for computing the statutory reserve requirements.

(3) If a continuing care retirement community has contracted with a resident under 55 years of age, provide the department with the methodology used to determine that resident's life expectancy.

(4) A zero interest assumption shall be used to adjust resident life expectancies in conjunction with the computation of the statutory reserve requirement.

(c) The reserves shall be calculated by progressing through each of the following steps:

(1) Compute net cash per capita costs:

(A) Cash operating expenses: Deduct: depreciation and other noncash expenses; processing fees; community services; expenses that will not be incurred in future years; reimbursements for services to nonresidents; donated services, if included as an operating expense on the income statement; investment income; contributions received; and other items that the continuing care retirement community reasonably believes should be deducted with accompanying explanation.

For a continuing care retirement community in its first year of operation or following a major addition to an existing continuing care retirement community, cash operating expenses for calculating reserve requirements may be classified as fixed or variable and totaled separately.

(B) Mean number of residents by level of care: List the number of residents for each level of care separately at the beginning of the fiscal year. Add the number of residents for each level of care separately at the end of the fiscal year. Divide the total for each level of care by two.

(C) Total mean number of residents: Add the total number of residents at the beginning of the fiscal year to the total number of residents at the end of the fiscal year and divide by two. For continuing care retirement communities wherein resident population fluctuates significantly from month to month and for continuing care retirement communities in their first year of operation, the mean number of residents by level of care or the total mean number may be computed by adding the number of residents at the end of each month in the fiscal year and dividing by the total

number of months included. The daily attendance for the fiscal year may also be used to determine the mean number of residents.

(D) Net cash per capita cost: Cash operating expenses divided by the mean number of residents. It is acceptable, but not required, to compute net cash per capita for various levels of care, based on allocated expenses and contributions from consolidated financial statements. Allocation methods shall be subject to the approval of the department, and schedules shall be prepared for all levels of care, including any levels not covered by continuing care contracts. For a continuing care retirement community in its first year of operation or following a major addition to an existing continuing care retirement community, net cash per capita cost for calculating reserve requirements may be the sum of the figures determined by dividing fixed cash operating expenses by the number of residents at the end of the fiscal year, and dividing variable cash operating expenses by the mean number of residents.

(2) Compute projected life cost:

(A) Compute aggregate life expectancies: For each resident, compare age against the life expectancy table and total all life expectancies.

(B) Multiply net cash per capita costs by aggregate life expectancies.

(3) Compute five-year plan residents: Determine the maximum annual total of SSI/SSP payments for the year of entry for each resident. If that amount is greater than the amount of the entrance fee paid by a resident, the resident is designated a "Five-year Plan Resident" and the entrance fee is amortized over five years. No reserves are required for these residents after the fifth year.

(4) Compute projected life revenue:

(A) Annual fee: Multiply by 12 each monthly fee paid by residents, including payments to be made by third-party payers on behalf of the resident, including SSI/SSP and Medi-Cal, and contributions, donations, or endowments, that the provider actually used for operating expenditures for continuing care contracts during the fiscal year.

(B) Continuing care residents requiring full reserves: Enter the number of continuing care residents for each annual fee, excluding five-year plan residents.

(C) Aggregate life expectancies: For each resident, compare age against the life expectancy table and total all life expectancies for each annual fee.

(D) Total projected life revenue: Multiply each annual fee by aggregate life expectancies. Total the products obtained.

(5) Compute statutory reserve:

(A) Reserves not including five-year plan residents: Deduct the projected life revenue from the projected life cost. If the remainder is less than zero, use zero.

(B) Total statutory reserves: Add the total unamortized balance for five-year plan residents to the remainder in paragraph (A) above.

(6) Compute liquid asset portion of statutory reserve: For providers that have executed monthly fee contracts with at least one-half of the residents, compute 5 percent of the total statutory reserves. For providers that have executed prepaid contracts with at least one-half of the residents, compute 25 percent of the total statutory reserves.

(d) At least 25 percent of the statutory reserve shall consist of liquid assets, as defined in paragraph (8) of subdivision (e), except that a 5 percent requirement shall apply to the continuing care retirement communities that have executed monthly fee contracts with at least 50 percent of the residents.

(e) The assets available for reserves shall consist of the following:

(1) Deposits in commercial and savings accounts with California banks that are members of the Federal Deposit Insurance Corporation.

(2) Notes receivable by the continuing care retirement community, that are secured by first deeds of trust and first mortgages on property not owned by the provider or its affiliates.

(3) Stocks, bonds, and securities, at current market value unless otherwise specified, shall meet the following criteria to be approved as assets available for statutory reserves:

(A) Highly liquid money securities, including, but not limited to, United States Treasury Bills, prime banker's acceptances, negotiable time certificates of deposit, and short-term tax-exempt notes.

(B) Common stocks rated "above average" or higher by any national rating agency. For example, a rating of A+, A, or A− by Standard and Poor's Corporation is required for common stock.

(C) Bonds issued by the United States government or federal agencies.

(D) Nonfederal bonds that have a current rating of at least "A" by Moody's Investors Service, Standard and Poor's Corporation, or Fitch Investors Service, and are listed on a national securities exchange.

(E) Bonds that are not listed on a national securities exchange, but are traded over-the-counter and have a current rating of at least "Aa" by Moody's Investors Service or at least "AA" by Standard and Poor's Corporation or Fitch's Investors Service.

(F) The security interest in the cash surrender value of life insurance policies assigned by residents to the continuing care retirement community.

(4) Stocks, bonds, and securities that do not meet the approval criteria may be retained as part of the reserves with the specific approval of the department. If necessary to meet reserve requirements, stocks, bonds, and securities that are not approved by the department may be disposed of in a gradual manner, to avoid loss to certificate holders.

(5) Real estate used to provide care and housing for holders of continuing care contracts, or real estate, or equities therein, owned by the entity as an investment, the rents from which are used to discharge obligations to holders of continuing care contracts or to reinvest as a part of the reserves. These investments may be located outside the State of California.

(A) The value of this real estate shall be based on 70 percent of the net equity thereof, which shall be the book value, assessed value, or current appraised value within 12 months prior to the end of the fiscal year, less all encumbrances, depreciation, and the amount required for reserves for refundable contracts under Section 1793, all according to audited financial statements acceptable to the department.

(B) All appraisals shall be prepared by either a member of the American Institute of Appraisers or a member of the Society of Real Estate Appraisers, or the county assessor. The department may require technical reports to be verified or certified, or both. The expense of any technical reports or any verifications thereof shall be borne by the provider.

(6) Seventy percent of the net equity in furniture and equipment situated on property used to provide care and housing for holders of continuing care contracts.

(7) Investment certificates or shares in open end investment trusts, that meet all of the following requirements:

(A) The trust management shall have experience either managing another mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), or have been registered as an investment adviser under the Investment Advisors Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.), and in either case shall currently have at least one hundred million dollars ($100,000,000) under its supervision.

(B) Qualified for sale in California.

(C) Has at least 40 percent of its directors or trustees not affiliated with the fund's management company or principal underwriter or any of their affiliates.

(D) Is registered under the Investment Company Act of 1940.

(E) Is a fund listed as qualifying under rules maintained by the Commissioner of Corporations in cooperation with the Department of Insurance.

(8) Liquid assets, if any, shall consist of the following:

(A) Listed bonds, stocks, and commercial and savings accounts.

(B) A sinking fund comprised of liquid assets, if it is a replacement fund subject to disbursement for items, including, but not limited to, payment of principal and interest on the mortgage or for operations during the succeeding year. Replacement funds, that may only be used for capital improvements or repairs, shall not be included in liquid reserves.

(9) Deposits made prior to signing a continuing care contract represent liabilities and shall be offset against liquid assets, if any, otherwise against any other assets.

(10) Deposits that represent funds turned over to the continuing care retirement community by residents for safekeeping without relinquishing control thereof shall be offset against liquid assets, if any, otherwise against other assets.

SEC. 48. Section 1793 of the Health and Safety Code is amended to read:

1793. (a) Any provider offering a refundable contract, or other entity assuming responsibility for refundable contracts, shall maintain a refund reserve fund in trust for the residents. This trust fund shall remain intact to accumulate interest earnings resulting from investments of liquid reserves in accordance with paragraph (1) of subdivision (e) and subparagraphs (A) through (E), inclusive, of paragraph (3) of subdivision (e) of Section 1792.2. The amount of the refund reserve shall be revised annually by the provider and submitted to the department in conjunction with the annual report required by Section 1790.

(b) Any providers or other entity assuming responsibility for refundable contracts, which has not executed refundable contracts in a continuing care retirement community prior to January 1, 1996, and proposes to execute these contracts in that continuing care retirement community after that date, shall maintain a refund reserve fund in trust for the residents holding such contracts.

(1) Except as noted in paragraph (2), this trust fund shall remain intact as specified in subdivision (a).

(2) To the extent approved by the department, the trust account may invest up to 70 percent of the refund reserves in real estate that is used to provide care and housing for the holders of the refundable continuing care contracts and is located on the same campus where these continuing care contract holders reside.

These investments in real estate shall be limited to 50 percent of the providers' net equity in the real estate. The net equity shall be the book value, assessed value, or current appraised value within 12 months prior to the end of the fiscal year, less any depreciation, encumbrances, and the amount required for statutory reserves under Section 1792.2, all according to audited financial statements acceptable to the department. This paragraph shall apply to applications, and for those phases of the project that were identified as part of applications, submitted after May 31, 1995.

(3) Any provider who submitted an application on or before May 31, 1995, may provide for the refund obligation of this section with a trust account that invests up to 85 percent of the refund reserves in the continuing care retirement community's real estate and the remaining 15 percent in the form of either cash or an unconditional, irrevocable letter of credit to be phased in over a two-year period beginning with initial occupancy in the facility.

(4) Each refund reserve trust fund shall be established at an institution qualified to be an escrow agent pursuant to an agreement between the provider and the institution based on this section and approved in advance by the department.

(5) The amount to be held in the reserve fund shall be the total of the amounts calculated with respect to each individual resident as follows:

(A) Determine the age in years and the portion of the entry fee for the resident refundable for the seventh year of residency and thereafter.

(B) Determine life expectancy of that individual from the life expectancy table in paragraph (1) of subdivision (b) of Section 1792.2. If there is a couple, use the life expectancy for the individual with the longer life expectancy.

(C) For that resident, use an interest rate of 6 percent or lower to determine from compound interest tables the factor which represents the amount required today to grow at compound interest to one dollar ($1) at the end of the period of the life expectancy of the resident.

(D) Multiply the refundable portion of the resident's entry fee amount by the factor obtained in subparagraph (C) to determine the amount of reserve required to be maintained.

(E) The sum of these amounts with respect to each resident shall constitute the reserve for refundable contracts.

(F) The reserve for refundable contracts will be revised annually as provided for in subdivision (a), using the interest rate, refund obligation amount, and individual life expectancies current at that time.

(6) Withdrawals may be made from the trust fund to pay refunds when due under the terms of the refundable entry fee contracts and when the balance in the trust fund exceeds the required refund reserve amount determined in accordance with paragraph (5) of subdivision (b).

(7) Deposits shall be made to the trust fund with respect to new residents when the entry fee is received and in the amount determined with respect to that resident in accordance with paragraph (5) of subdivision (b).

(8) Additional deposits shall be made to the trust fund within 30 days of any annual reporting date on which the trust fund balance falls below the required reserve in accordance with paragraph (5) of subdivision (b) and such deposits shall be in an amount sufficient to bring the trust fund balance into compliance with this section.

(c) Any provider which has executed refundable contracts in a continuing care retirement community prior to January 1, 1996, and which has not executed refundable contracts in a continuing care retirement community prior to January 1, 1991, shall submit, for the department's approval, a method of determining a refund reserve to

be held in trust for the residents. Approved methods include any of the following:

(1) The establishment, at the time continuing care contracts are signed, of a reserve fund in trust for the full amount of the refunds promised.

(2) The purchase from an insurance company, authorized to do business in the State of California, of fully paid life insurance policies for the full amount of the refunds promised.

(3) A method approved by the American Academy of Actuaries in their Actuarial Standards of Practice Relating to Continuing Care Retirement Communities, which method provides for fully funding the refund obligations in a separate trust fund as provided in subdivision (b).

(d) Any provider offering a refundable contract, or other entity assuming responsibility for refundable contracts prior to January 1, 1991, shall maintain a refund reserve bank account in trust for the residents as described in subdivision (b) except that the amount of refund reserves shall be calculated based on the following assumptions and methods of calculation:

(1) The continuing care retirement community will no longer receive entry fee income after a period of 40 years following the commencement of operation.

(2) Approved long-term investments, such as treasury notes, will earn 3 percent more than the rate of inflation.

(3) Entrance fees will increase at the rate of inflation.

(4) Land values will increase at the rate of inflation.

(5) Investments in the refund reserve trust will increase at the rate for approved long-term investments.

(6) Calculate the number of units to be resold each year at the approved rate of turnover.

(7) Determine the mean entrance fee, as of the current date.

(8) Determine the factor for inflating the mean entrance fee at the rate of 3 percent below the interest rate on new 30-year treasury bonds, for each year from the current date to the 40th year of operation, or until all units have been turned over.

(9) Calculate the inflated mean entrance fees for the 40th year and for each preceding year, until all units have been turned over.

(10) Multiply the inflated mean entrance fee for the 40th year, and each preceding year, as specified in paragraph (9), by the annual turnover, as specified in paragraph (6), until the total of the annual turnovers used in the calculations equals the total number of units in the continuing care retirement community.

(11) The projected refund liability shall be the sum of the products obtained pursuant to paragraph (10), multiplied by the rate of refund for the seventh year of residency, specified by current continuing care contracts, multiplied by the percentage of current continuing care contracts which specify this rate of refund. The projected refund

liability amount shall be calculated for each rate, if existing continuing care contracts specify several rates.

(12) The projected refund liability, or the aggregate of these liabilities, if several rates are obtained pursuant to paragraph (11), may be reduced by the value of the land used for the continuing care retirement community, inflated to the 40th year of operation, as determined pursuant to paragraph (4), if the provider agrees to a lien pursuant to Section 1793.15 to secure this commitment.

(13) Calculate the present value of the projected refund liability at the current rate of interest for new 30-year treasury bonds. The result is the required refund reserve.

(e) Any entity which holds a certificate of authority, provisional certificate of authority, or permit to sell deposit subscriptions on or before September 23, 1986, shall be exempted from the refund reserve requirement established by this section, if the entity has an equity balance of five times the amount of the refund reserves calculated pursuant to subdivision (c).

(1) The equity balance shall be verified by one or more of the following means:

(A) The "stockholders' equity," or equivalent amount, as reflected on the most recent Form 10K (which may be on a consolidated basis or on a consolidated and combined basis) filed with the Securities and Exchange Commission.

(B) The "total fund balance of net worth," or equivalent amount, as reflected on Form 990 or Form 990-PF filed with the Internal Revenue Service.

(C) The "total net worth," or equivalent amount, as reflected on the most recent Form 109 filed with the Franchise Tax Board.

(2) The amount of the requirement for the equity balance shall be revised annually pursuant to this section.

(3) Compliance shall be based on review, by the department, of financial statements prepared in accordance with generally accepted accounting principles, accompanied by an unqualified opinion by a certified public accountant.

(4) If the equity balance is determined by the department to be less than the required amount, the provider or other entity assuming responsibility shall deposit, in a form satisfactory to the department, an amount equal to the refund reserve required within 60 days.

(f) All continuing care retirement communities offering refundable entrance fees that are not secured by cash reserves, except those facilities that were issued a certificate of authority prior to May 31, 1995, shall clearly disclose this fact in all marketing materials and continuing care contracts.

SEC. 49. Section 1793.5 of the Health and Safety Code is amended to read:

1793.5. (a) Any entity that sells deposit subscriptions proposing to promise to provide care without having a current and valid permit to sell deposit subscriptions is guilty of a misdemeanor.

(b) Any entity which sells deposit subscriptions and fails to place any consideration received into an escrow account pursuant to this chapter is guilty of a misdemeanor.

(c) Any entity which executes a continuing care contract without holding a current and valid provisional or final certificate of authority is guilty of a misdemeanor.

(d) Any entity that abandons the continuing care retirement community or the entity's obligations under a continuing care contract, pursuant to subdivision (f), is guilty of a misdemeanor. Any entity in violation of this section shall be liable to the injured resident for treble the amount of damages assessed in any civil action brought by or on behalf of the resident in any court having proper jurisdiction. The court may, in its discretion, award all costs and attorney fees to the injured resident, if that resident prevails in the action.

(e) Each violation of subdivision (a), (b), (c), or (d) is subject to a fine not to exceed ten thousand dollars ($10,000), or by imprisonment in the county jail for a period not to exceed one year, or by both the fine and imprisonment.

(f) Any entity that issues, delivers, or publishes, or as manager or officer or in any other administrative capacity, assists in the issuance, delivery, or publication of any printed matter, oral representation, or advertising material which does not conform to the requirements of this section is guilty of a misdemeanor.

(g) Any violation of subdivision (f) shall constitute cause for the suspension of all and any licenses, permits, provisional certificates of authority, and certificates of authority issued to such entity by any agency of the state.

(h) Any violation under this section shall be an act of unfair competition as defined in Section 17200 of the Business and Professions Code.

SEC. 50. Section 1793.6 of the Health and Safety Code is amended to read:

1793.6. (a) The department may issue citations pursuant to this section containing orders of abatement and assessing civil penalties against any entity who violates Section 1771.2 or 1793.5.

(b) If upon inspection or investigation, the department has probable cause to believe that an entity is violating Section 1771.2 or 1793.5, the department may issue a citation to that entity. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order of abatement. In addition to the administrative fines pursuant to Section 1793.27, a provider in violation of the abatement order shall be liable for an assessment of a civil penalty in the amount of two hundred dollars ($200) per day for violation of the abatement order.

(c) The civil penalty authorized in subdivision (b) shall be imposed if an uncertified facility is operated and the operator refuses to seek a certificate of authority or the operator seeks a certificate of authority and the application is denied and the operator continues to

operate the uncertificated facility, unless other remedies available to the department, including prosecution, are deemed more effective by the department.

(d) Service of a citation issued under this section may be made by certified mail at the last known business address or residence address of the entity cited.

(e) Any entity served with a citation under this section may appeal to the department in writing within 15 working days after service of the citation with respect to violations alleged, scope of the order of abatement, or amount of civil penalty assessed.

(f) If the entity cited fails without good cause to appeal to the department in writing within 15 business days after service of the citation, the citation shall become a final order of the department. The department may extend the 15-day period for good cause, to a maximum of 15 additional days.

(g) If the entity cited under this section makes a timely appeal of the citation, the department shall provide an opportunity for a hearing. The department shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted therein.

(h) After exhaustion of the review procedures specified in this section, the department may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited entity to comply with the order of abatement. The application, which shall include a certified copy of the final order of the department shall be served upon the cited entity who shall have five business days within which to file that entity's response in writing in the superior court, this period may be extended for good cause. Failure on the part of the cited entity to so respond shall constitute grounds for entry of a default judgment against that entity. In the event a response is timely filed in superior court, the action shall have priority for trial over all other civil matters.

(i) Notwithstanding any other provision of law, the department may waive part or all of the civil penalty if the entity against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a certificate of authority.

(j) Civil penalties recovered pursuant to this section shall be deposited into the Continuing Care Provider Fee Fund.

SEC. 51. Section 1793.7 of the Health and Safety Code is amended to read:

1793.7. A permit to sell deposit subscriptions, a provisional certificate of authority, or a certificate of authority shall be forfeited by operation of law when any one of the following occurs:

(a) The applicant has notified the department that marketing of the proposed continuing care retirement community has been terminated.

(b) The applicant or provider surrenders the permit to sell deposit subscriptions, provisional certificate of authority, or certificate of authority to the department.

(c) The applicant or provider sells or otherwise transfers all or part of the continuing care retirement community.

(d) The applicant or provider transfers stock where the transfer results in a majority change in ownership of the continuing care retirement community or the certificate of authority holder.

(e) The applicant or provider moves the continuing care retirement community from one location to another without the department's prior approval.

(f) The applicant or provider abandons the continuing care retirement community or its obligations under the continuing care contracts.

(g) The applicant or provider is evicted from the continuing care retirement community premises.

SEC. 52. Section 1793.8 is added to the Health and Safety Code, to read:

1793.8. A Certificate of Authority shall be automatically inactivated when a provider voluntarily ceases to enter into continuing care contracts with new residents. The provider shall continue to comply with all provisions of this chapter until all continuing care contractual obligations have been fulfilled.

SEC. 53. Section 1793.9 of the Health and Safety Code is amended to read:

1793.9. (a) Obligations pursuant to continuing care contracts executed by a provider shall be deemed a preferred claim against all assets owned by the provider in the event of liquidation. However, this preferred claim shall be subject to any perfected claims secured by mortgage, deed of trust, pledge, deposit as security, escrow, or otherwise secured.

(b) In the event of liquidation by the provider, residents who have executed a refundable continuing care contract shall be deemed to have a preferred claim to liquid assets held in the refund reserve fund pursuant to Section 1793. This preferred claim shall be superior to all other claims from residents without refundable contracts, or any other creditor. If this fund and any other available assets are not sufficient to fulfill the refund obligations, the refund reserve funds shall be distributed to each resident in a proportionate amount, determined by dividing the amount of each resident's refund due by the total refunds due and multiplying that percentage by the total funds available.

(c) For purposes of computing the reserve required pursuant to Sections 1792.2 and 1793, the liens required under Section 1793.15 shall not be deducted from the value of real or personal property.

SEC. 54. Section 1793.11 of the Health and Safety Code is amended to read:

1793.11. (a) Any transfer of money or property, pursuant to a continuing care contract found by the department to be executed in violation of this chapter, is voidable at the option of the transferor for a period of 90 days from the execution of the transfer.

(b) No action may be brought for the reasonable value of any services rendered between the date of transfer and the date the transferor disaffirms the continuing care contract.

(c) With respect to real property, the right of disaffirmance or rescission is conclusively presumed to have terminated if a notice of intent to rescind is not recorded with the county recorder of the county in which the real property is located within 90 days from the date of execution of the conveyance by the transferor.

(d) Any deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to rescission by the transferor within 90 days from the date of the transfer.

(e) Any transfer of a sum of money or property, real or personal, to anyone pursuant to a continuing care contract that was not approved by the department is voidable at the option of the department or transferor or his or her assigns or agents.

(f) Any transaction determined by the department to be in violation of this chapter is voidable at the option of the transferor or his or her assigns or agents.

SEC. 55. Section 1793.13 of the Health and Safety Code is amended to read:

1793.13. (a) In either of the following situations the department may require the provider to submit within 60 days a financial plan detailing the method by which the provider proposes to overcome the deficiencies noted by the department.

(1) If a provider fails to file an annual report as required by Section 1790.

(2) At any other time when the department has reason to believe that the provider is insolvent, is in imminent danger of becoming insolvent, is in a financially unsound or unsafe condition, or that its condition is such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts.

(b) The department shall approve or disapprove the plan within 30 days of its receipt.

(c) If the plan is approved, the provider shall immediately implement the plan.

(d) If the plan is disapproved, or if it is determined that the plan is not being fully implemented, the department may, after consultation with and upon consideration of the recommendations of the Continuing Care Contracts Committee, require the provider to obtain new or additional management capability to solve its difficulties. A reasonable period, as determined by the department, shall be allowed to the reorganized management to develop a plan

which, subject to the approval of the department and after review by the committee, will reasonably assure that the provider will meet its responsibilities under the law.

SEC. 56. Section 1793.15 of the Health and Safety Code is amended to read:

1793.15. (a) When necessary to secure the performance of all obligations of the applicant or provider to transferors, the department may record a notice or notices of lien on behalf of the transferors. From the date of recording, the lien shall attach to all real property owned or acquired by the provider during the pendency of the lien, provided such property is not exempt from the execution of a lien and is located within the county in which the lien is recorded. The lien shall have the force, effect, and priority of a judgment lien.

(b) The department shall file a release of the lien if the department deems the lien no longer necessary to secure the performance of all obligations of the applicant or provider to the transferors.

(c) The applicant or provider may appeal to the department from a refusal of a request for a release of the lien.

(d) The decision shall be subject to court review pursuant to Section 1094.5 of the Code of Civil Procedure, upon petition of the applicant or provider filed within 30 days of service of the decision.

SEC. 57. Section 1793.17 of the Health and Safety Code is amended to read:

1793.17. (a) When necessary to secure the interests of transferors, the department may require that the applicant or provider reestablish an escrow account, return previously released moneys to escrow, and escrow all future entrance fee payments.

(b) The department may release funds from escrow when it deems the escrow is no longer necessary to secure the performance of all obligations of the applicant or provider to the transferors.

SEC. 58. Section 1793.19 of the Health and Safety Code is amended to read:

1793.19. The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive and may be sought and employed in any combination deemed advisable by the department to enforce this chapter.

SEC. 59. Section 1793.21 of the Health and Safety Code is amended to read:

1793.21. The department, in its discretion, may condition, suspend, or revoke any permit to sell deposit subscriptions, provisional certificate of authority, or certificate of authority issued under this chapter if it finds any one or more of the following:

(a) Violation by the provider of this chapter or the rules and regulations adopted under this chapter.

(b) Aiding, abetting, or permitting the violation of this chapter or the rules and regulations adopted under this chapter.

(c) Suspension or revocation of the license of the provider pursuant to the licensing provisions of Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569).

(d) Material misstatement, misrepresentation, or fraud in obtaining the permit to sell deposit subscriptions, provisional certificate of authority, or certificate of authority.

(e) Demonstrated lack of fitness or trustworthiness.

(f) Fraudulent or dishonest practices of management in the conduct of business.

(g) Misappropriation, conversion, or withholding of moneys.

(h) Refusal by the provider to be examined or to produce its accounts, records, and files for examination, or refusal by any of its officers to give information with respect to its affairs or to perform any other legal obligations as to such examination, when required by the department.

(i) The provider's unsound financial condition or use of such methods and practices in the conduct of business as to render further transactions by the provider hazardous or injurious to the public.

(j) Failure to maintain at all times at least the minimum statutory reserves required by Section 1792.2.

(k) Failure to maintain the reserve fund escrow account for prepaid continuing care contracts required by Section 1792.

(*l*) Failure to comply with the refund reserve requirements of Section 1793.

(m) Failure by the provider to maintain escrow accounts for funds as required by this chapter.

(n) Failure to file an annual report as required by Section 1790.

(o) Violation of a condition on a certificate.

(p) Failure to comply with its approved financial and marketing plan, or secure approval of a modified plan.

(q) A material change or deviation from the approved plan of operation without the prior consent of the department.

(r) Failure by the provider to fulfill its obligations under continuing care contracts.

(s) Material misrepresentations to prospective residents, or residents of, a continuing care retirement community.

(t) Failure by the provider to submit proposed changes to continuing care contracts prior to use, or execution of a continuing care contract that has not been previously approved by the department.

(u) Failure by the provider to diligently submit materials required by the statute.

SEC. 60. Section 1793.23 of the Health and Safety Code is amended to read:

1793.23. (a) The department shall consult with and consider the recommendations of the Continuing Care Contracts Committee prior to conditioning, suspending, or revoking any permit to sell

deposit subscriptions, provisional certificate of authority, or certificate of authority.

(b) The provider shall have a right of appeal to the department. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all of the powers granted therein. A suspension, condition, or revocation shall remain in effect until completion of the proceedings in favor of the provider. In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by a preponderance of the evidence.

(c) The department may, upon finding of changed circumstances, remove a suspension or condition.

SEC. 61. Section 1793.25 of the Health and Safety Code is amended to read:

1793.25. (a) During the period that the revocation or suspension action is pending against the permit to sell deposit subscriptions, provisional certificate of authority, or certificate of authority, the provider shall not enter into any new continuing care contracts or deposit subscription agreements.

(b) The suspension or revocation by the department, or voluntary return of the provisional certificate of authority or certificate of authority by the provider, shall not release the provider from obligations assumed at the time the continuing care contracts were executed.

SEC. 62. Section 1793.27 of the Health and Safety Code is amended to read:

1793.27. (a) If the department finds that one or more grounds exist for the discretionary condition, revocation, or suspension of a permit to sell deposit subscriptions, provisional certificate of authority, or a certificate of authority issued under this chapter, the department, in lieu of the condition, revocation, or suspension, may impose a administrative fine upon the provider in an amount not to exceed one thousand dollars ($1,000) per violation.

(b) The administrative fine shall be deposited in the Continuing Care Provider Fee Fund and shall be disbursed for the specific purposes of offsetting the costs of investigation and litigation and to compensate court-appointed administrators when continuing care retirement community assets are insufficient.

SEC. 63. Section 1793.29 of the Health and Safety Code is amended to read:

1793.29. In the case of any violation or threatened violation of this chapter, the department may institute a proceeding or may request the Attorney General to institute a proceeding to obtain injunctive or other equitable relief in the superior court in and for the county in which the violation occurs, or in which the principal place of business of the provider is located. The proceeding under this section shall conform with the requirements of Chapter 3 (commencing with

Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required of the department in any action commenced under this section, nor shall the department be required to allege facts necessary to show lack of adequate remedy at law, or to show irreparable loss or damage.

SEC. 64. Section 1793.31 of the Health and Safety Code is amended to read:

1793.31. (a) The district attorney of every county may, upon application by the department or its authorized representative, institute and conduct the prosecution of any action for violation of this chapter within his or her county.

(b) This chapter shall not limit or qualify the powers of the district attorney to institute and conduct the prosecution of any action brought for the violation within his or her county of this chapter or any other provision of law, including, but not limited to, actions for fraud or misrepresentation.

(c) The department shall provide access to any records in its control on request of a district attorney and shall cooperate in any investigation by a district attorney.

SEC. 65. Section 1793.50 of the Health and Safety Code is amended to read:

1793.50. (a) The department, after consultation with the Continuing Care Contracts Committee, may petition the superior court for an order appointing a qualified administrator to operate a continuing care retirement community, and thereby mitigate crisis situations wherein elderly residents are left without means for their support or moved without proper preparation, in any of the following circumstances:

(1) The provider is insolvent or in imminent danger of becoming insolvent.

(2) The provider is in a financially unsound or unsafe condition.

(3) The provider has failed to establish or has substantially depleted the reserves required by this chapter.

(4) A plan, as specified in Section 1793.13, has not been approved by the department or the provider has failed to implement the plan approved by the department.

(5) The provider is unable to fully perform its obligations pursuant to continuing care contracts.

(6) The residents are otherwise placed in serious jeopardy.

(b) The administrator may only assume the operation of the continuing care retirement community in order to either rehabilitate the provider to enable it fully to perform its continuing care contract obligations, implement a plan of reorganization acceptable to the department, facilitate the transition if another provider assumes continuing care contract obligations, or facilitate an orderly liquidation of the provider.

(c) With each petition, the department shall include a request for a temporary restraining order to prevent the provider from disposing of or transferring assets pending the hearing on the petition.

(d) The provider shall be served with a copy of the petition, together with an order to appear and show cause why management and possession of the provider's continuing care retirement community or assets should not be vested in an administrator.

(e) The order to show cause shall specify a hearing date, which shall be not less than five nor more than 10 days following service of the petition and order to show cause on the provider.

(f) Petitions to appoint an administrator shall have precedence over all matters, except criminal matters, in the court.

(g) At the time of the hearing, the department shall advise the provider and the court of the name of the proposed administrator.

(h) If, at the conclusion of the hearing, including such oral evidence as the court shall consider, the court finds that any of the circumstances specified in subdivision (a) exist, the court shall issue an order appointing an administrator to take possession of the property of the provider and to conduct the business thereof, enjoining the provider from interfering with the administrator in the conduct of the rehabilitation, and directing the administrator to take steps toward removal of the causes and conditions which have made rehabilitation necessary, as the court may direct.

(i) The order shall include a provision directing the issuance of a notice of the rehabilitation proceedings to the residents at the continuing care retirement community and to other interested persons as the court shall direct.

(j) The court may permit the provider to participate in the continued operation of the continuing care retirement community during the pendency of any appointments ordered pursuant to this section and shall specify in the order the nature and scope of the participation.

(k) The court shall retain jurisdiction throughout the rehabilitation proceeding and may issue further orders as it deems necessary to accomplish the rehabilitation or orderly liquidation of the continuing care retirement community in order to protect the residents of the continuing care retirement community.

SEC. 66. Section 1793.52 of the Health and Safety Code is amended to read:

1793.52. The court-appointed administrator shall immediately notify the residents of that appointment and of the status of the continuing care retirement community management.

SEC. 67. Section 1793.54 of the Health and Safety Code is amended to read:

1793.54. If an administrator is appointed to rehabilitate a provider, the administrator may do any of the following:

(a) Take possession of and preserve, protect and recover any assets, books, records, or property of the provider, including, but not

limited to, claims or causes of action belonging to, or which may be asserted by, the provider.

(b) Deal with the property in the administrator's name in the capacity as administrator, and purchase at any sale any real estate or other asset upon which the provider may hold any lien or encumbrance or in which the provider may have an interest.

(c) File, prosecute, and defend or compromise any suit or suits which have been filed, or which may thereafter be filed, by or against the provider as necessary to protect the provider or the residents or any property affected thereby.

(d) Deposit and invest any of the provider's available funds.

(e) Pay all expenses of the rehabilitation.

(f) Perform all duties of the provider in the provision of care and services to residents in the continuing care retirement community at the time the administrator takes possession.

(g) Facilitate the orderly transfer of residents should the provider ultimately fail.

(h) Exercise any other powers and duties as may be authorized by law or provided by order of the court.

SEC. 68. Section 1793.56 of the Health and Safety Code is amended to read:

1793.56. (a) Reasonable compensation shall be paid to the administrator appointed.

(b) Costs for the compensation shall be levied against the assets of the provider. When facility assets are insufficient, the department, in its discretion, may compensate the administrator from funds available from the Continuing Care Provider Fee Fund.

(c) Any individual appointed administrator, pursuant to Section 1793.50, shall be held harmless for any negligence in the performance of his or her duties and shall be indemnified by the provider for costs of defending actions brought against him or her in his or her capacity as administrator.

SEC. 69. Section 1793.58 of the Health and Safety Code is amended to read:

1793.58. (a) The department, administrator, or any interested person, upon due notice to the administrator, at any time, may apply to the court for an order terminating the rehabilitation proceedings and permitting the provider to resume possession of the provider's property and the conduct of the provider's business.

(b) No order shall be granted pursuant to subdivision (a) except when, after a full hearing, the court has determined that the purposes of the proceeding have been fully and successfully accomplished and that the continuing care retirement community can be returned to the provider's management without further jeopardy to the residents of the continuing care retirement community, creditors, owners of the continuing care retirement community, and to the public.

(c) An order terminating the rehabilitation proceeding shall be based upon a full report and accounting by the administrator of the

conduct of the provider's officers, employees, and business during the rehabilitation and of the provider's current financial condition.

(d) Upon issuance of an order terminating the rehabilitation, the department shall reinstate the provisional or final certificate of authority and may condition, suspend, or revoke the reinstated certificate only upon a change in the conditions at the time of the order or a determination of facts which, if such facts had been known at the time of the order, the court would not have entered the order as determined by the department.

SEC. 70. Section 1793.60 of the Health and Safety Code is amended to read:

1793.60. (a) If at any time the department determines that further efforts to rehabilitate the provider would not be in the best interest of the residents or prospective residents, or would not be economically feasible, the director may, with the approval of the Continuing Care Contracts Committee, apply to the court for an order of liquidation and dissolution or may apply for other appropriate relief for dissolving the property and bringing to conclusion its business affairs.

(b) Upon issuance of an order directing the liquidation or dissolution of the provider, the department shall revoke the provider's provisional or final certificate of authority.

SEC. 71. Section 1793.62 of the Health and Safety Code is amended to read:

1793.62. (a) The department, administrator, or any interested person, upon due notice to the parties, may petition the court for an order terminating the rehabilitation proceedings when the rehabilitation efforts have not been successful, the continuing care retirement community has been sold at foreclosure sale, the provider has been declared bankrupt, or the provider has otherwise been shown to be unable to perform its obligations under the continuing care contracts.

(b) No order shall be granted unless all of the following have occurred:

(1) There has been a full hearing and the court has determined that the provider is unable to perform its contractual obligations.

(2) The administrator has given the court a full and complete report and financial accounting signed by the administrator as being a full and complete report and accounting.

(3) The court has determined that the residents of the continuing care retirement community have been protected to the extent possible and has made such orders in this regard as the court deems proper.

SEC. 72. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 921

An act to amend Section 769 of the Insurance Code, relating to insurance.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 769 of the Insurance Code is amended to read:

769. (a) After a written agency or written brokerage contract, where the broker-agent represents the insurer, has been in effect for at least one year, it shall not be terminated or amended by an insurer, except by mutual agreement, unless 120 days advance written notice has been given by the insurer to the broker-agent.

(b) The advance notice required by this section does not apply if the broker-agent has done any of the following:

(1) Exceeded his or her binding authority under the agency or brokerage contract.

(2) Violated the written underwriting rules or regulations of the insurer, a copy of which has been provided to the broker-agent, which misleads the insurer concerning the nature or extent of a risk.

(3) Failed to comply with the fiduciary requirements set forth in Section 1733, 1734, 1734.5, or 1735.

(4) Failed, either within 10 days after written notice upon failure to remit funds within the time limits set forth in the agency or brokerage contract or within 30 days after written demand where the agency or brokerage contract does not set forth such time limits, to remit funds due and owing to the insurer.

(5) Had his or her license suspended or revoked by the commissioner.

(6) Engaged in fraudulent acts affecting his or her relationship with the insurer or its insureds.

(c) When a broker-agent's contract is terminated as provided by this section, the rights, duties, and obligations set forth in the terminated contract of the broker-agent having property rights in renewals shall continue solely with respect to policies then in force

or renewed as provided by this section until those policies are canceled in accordance with law, placed by the broker-agent with another insurer, or have expired. The broker-agent's authority during the period following notice of termination of his or her contract shall be governed by the written contract between the broker-agent and the insurer, except that, after the receipt of the notice of termination, the broker-agent shall not bind new risks on behalf of the insurer, renew policies except as permitted by this section, or otherwise increase the obligation of the insurer, without the express approval of the insurer or in accordance with the terms of an existing policy.

(d) If a terminated broker-agent is unable, after making a good faith effort, to place existing policies with another insurer, the insurer then insuring the risk shall, at the broker-agent's request, renew any insurance contract written by the broker-agent for the insurer for one policy term or a period of one year, whichever is shorter. Where the insurer is prohibited by subdivision (c) of Section 1861.03 from nonrenewing the risk, the insurer shall continue to compensate the broker-agent for servicing the policies written by the insurer prior to termination of the broker-agent relationship until the insurer can cancel or nonrenew the policyholder pursuant to statute or the broker-agent moves the policyholder to another insurer but, in no event, shall the insurer's obligation to compensate the broker-agent exceed three years after termination of the broker-agent's contract, unless otherwise provided by terms of the contract. The renewal shall be at the insurer's premium rates in effect on the date of renewal and at prevailing commission rates for that class or line of business in effect on the date of renewal for broker-agents whose contracts are not terminated. An insurer shall not be precluded from paying a commission to a terminated broker-agent pursuant to this section at a level the insurer is paying at the time it provides notice to the broker-agent that it is terminating the contract or as set forth in the written agreement, providing that there has not been any unilateral change in the commission paid by the insurer within 180 days of the notice of the broker-agent's termination. An insurer shall be allowed to subtract from the three-year time period provided to a broker-agent upon termination, the time period that elapsed during which the broker-agent is involved in a rehabilitation program with an insurer.

(e) Notwithstanding any other provision of this section, no insurer shall be required to renew any policy of insurance pursuant to the provisions of this section if any of the following apply:

(1) The broker-agent is no longer the broker-agent of record with respect to the policy.

(2) The broker-agent has died or has become unable to conduct his or her business affairs.

(3) The broker-agent has failed, either within 10 days after written demand upon failure to remit funds within the time limits set forth

in the agency or brokerage contract or within 30 days after written demand where the agency or brokerage contract does not set forth such time limits, to remit funds due and owing to the insurer.

(4) The broker-agent has failed to follow the written instructions of the insurer, a copy of which has been provided to the broker-agent, generally applicable to the renewal of policies.

(5) The commissioner has determined that the renewal of the policy would threaten the solvency of the insurer.

(6) The insurer suffers the withdrawal of reinsurance covering all or part of the risk and this withdrawal of reinsurance is likely to threaten, in the opinion of the commissioner, the financial integrity or solvency of the insurer.

(7) The insurer has withdrawn from the State of California in accordance with Sections 1070 to 1076, inclusive.

(8) There has been a material change in the risk to be insured under the policy.

(f) This section shall not apply to a life insurer, an agent of a life insurer, a disability insurer, a nonprofit hospital service plan, an agent of a disability insurer or nonprofit hospital service plan, an agent who is the employee of an insurer, or to an agent who, by contractual agreement either represents only one insurer or group of affiliated insurers or who is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to other insurers.

(g) This section does not apply to any management contract of a managing general agent as defined in Section 1735, but it shall continue to apply to any agency or brokerage contract of a managing general agent or any portion of a management contract authorizing a managing general agent to act in his or her capacity as an insurance agent as defined in Section 1621, or an insurance broker as defined in Section 1623.

(h) (1) For purposes of this section, a "rehabilitation program" shall include, but not be limited to, all of the following:

(A) Written communication to the broker-agent outlining the fact that the broker-agent is on rehabilitation status.

(B) Identification by the company of problem areas.

(C) Mutual agreement on performance objectives and specific dates for accomplishment.

(D) Length of rehabilitation plan to be negotiated, but not less than six months.

(2) For purposes of subdivision (d), a good faith effort is satisfied by a terminated broker-agent who markets his or her book of business to other insurers that underwrite the same or similar lines of insurance, consistent with the interests of the policyholders. An insurer who terminates a broker-agent shall be entitled to be informed of the marketing activity and to obtain copies of any correspondence reflecting these efforts. However, nothing in this section shall be interpreted to allow the insurer to require the

terminated broker-agent to obtain written rejections of an agency appointment from other insurers, or written rejections from individual policyholders.

(i) An insurer that takes action, other than terminating the written agency or brokerage contract, solely for the purpose of avoiding the provisions of subdivision (a) shall be required to extend existing policies pursuant to the applicable provision of subdivision (d) if both of the following apply:

(1) The action is designed to impact only a specific agency or agencies and the business produced by them.

(2) The action results in the cancellation or nonrenewal of substantially all of the agency's or agencies' business.

(j) This section shall apply to written agency contracts becoming effective on or after the effective date of this section. This section also applies to any written agency contract amended after the January 1, 1988.

(k) This section shall apply to any written brokerage contract becoming effective, or amended, on or after January 1, 1996.

CHAPTER 922

An act to amend Sections 14602.6, 14604, and 40000.11 of, to amend, repeal, and add Sections 210, 22451, and 40518 of, and to add and repeal Section 21455.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 210 of the Vehicle Code is amended to read:

210. An "automated enforcement system" is any system operated by a governmental agency, in cooperation with a law enforcement agency, that photographically records a driver's responses to a rail or rail transit signal or crossing gate, or both, or to an official traffic control signal described in Section 21450, and is designed to obtain a clear photograph of a vehicle's license plate and the driver of the vehicle.

This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 2. Section 210 is added to the Vehicle Code, to read:

210. An "automated rail crossing enforcement system" is any system operated by a governmental agency, in cooperation with a law enforcement agency, that photographically records a driver's responses to a rail or rail transit signal or crossing gate, or both, and

is designed to obtain a clear photograph of a vehicle's license plate and the driver of the vehicle.

This section shall become operative on January 1, 1999.

SEC. 3. Section 14602.6 of the Vehicle Code is amended to read:

14602.6. (a) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked or without ever having been issued a license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle, without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 day's impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(2) No vehicle shall be released pursuant to this subdivision, except upon presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 day's impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the fifteenth day of impoundment.

(3) The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) shall not release the vehicle to the registered ownerof the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent shall not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any

administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

SEC. 3.5. Section 14604 of the Vehicle Code is amended to read:

14604. (a) No owner of a motor vehicle may knowingly allow another person to drive the vehicle upon a highway unless the owner determines that the person possesses a valid driver's license that authorizes the person to operate the vehicle. For the purposes of this section, an owner is required only to make a reasonable effort or inquiry to determine whether the prospective driver possesses a valid driver's license before allowing him or her to operate the owner's vehicle. An owner is not required to inquire of the department whether the prospective driver possesses a valid driver's license.

(b) A rental company is deemed to be in compliance with subdivision (a) if the company rents the vehicle in accordance with Sections 14608 and 14609.

SEC. 4. Section 21455.5 is added to the Vehicle Code, to read:

21455.5. (a) The limit line, the intersection, or other places designated in Section 21455 where a driver is required to stop may be equipped with an automated enforcement system if the system is identified by signs, clearly indicating the system's presence, visible to traffic approaching from all directions, or if signs are posted at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes.

Any city utilizing an automated traffic enforcement system at intersections shall, prior to issuing citations, commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.

Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system.

(b) Notwithstanding Section 6253 of the Government Code, or any other provision of law, photographic records made by an automated enforcement system shall be confidential, and shall be made available only to governmental agencies and law enforcement agencies for the purposes of this article.

(c) Notwithstanding subdivision (b), the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.

(d) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 5. Section 22451 of the Vehicle Code is amended to read:

22451. (a) The driver of any vehicle approaching a railroad or rail transit grade crossing shall stop not less than 15 feet from the nearest rail and shall not proceed until he or she can do so safely, whenever the following conditions exist:

(1) A clearly visible electric or mechanical signal device or a flagman gives warning of the approach or passage of a train or car.

(2) An approaching train or car is plainly visible or is emitting an audible signal and, by reason of its speed or nearness, is an immediate hazard.

(b) No driver shall proceed through, around, or under any railroad or rail transit crossing gate while the gate is closed.

(c) Whenever a railroad or rail transit crossing is equipped with an automated enforcement system, a notice of a violation of this section is subject to the procedures provided in Section 40518.

(d) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 6. Section 22451 is added to the Vehicle Code, to read:

22451. (a) The driver of any vehicle approaching a railroad or rail transit grade crossing shall stop not less than 15 feet from the nearest rail and shall not proceed until he or she can do so safely, whenever the following conditions exist:

(1) A clearly visible electric or mechanical signal device or a flagman gives warning of the approach or passage of a train or car.

(2) An approaching train or car is plainly visible or is emitting an audible signal and, by reason of its speed or nearness, is an immediate hazard.

(b) No driver shall proceed through, around, or under any railroad or rail transit crossing gate while the gate is closed.

(c) Whenever a railroad or rail transit crossing is equipped with an automated rail crossing enforcement system, a notice of a violation of this section is subject to the procedures provided in Section 40518.

(d) This section shall become operative on January 1, 1999.

SEC. 7. Section 40000.11 of the Vehicle Code is amended to read:

40000.11. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Division 5 (commencing with Section 11100), relating to occupational licensing and business regulations.

(b) Section 12500, subdivision (a), relating to unlicensed drivers.

(c) Section 12515, subdivision (b), relating to persons under 21 years of age driving, and the employment of those persons to drive, vehicles engaged in interstate commerce or transporting hazardous substances or wastes.

(d) Section 12517, relating to a special driver's certificate to operate a schoolbus or school pupil activity bus.

(e) Section 12519, subdivision (a), relating to a special driver's certificate to operate a farm labor vehicle.

(f) Section 12520, relating to a special driver's certificate to operate a tow truck.

(g) Section 12804, subdivision (d), relating to medical certificates.

(h) Section 12951, subdivision (b), relating to refusal to display license.

(i) Section 13004, relating to unlawful use of an identification card.

(j) Section 13004.1, relating to identification documents.

(k) Sections 14601, 14601.1, 14601.2, and 14601.5, relating to driving with a suspended or revoked driver's license.

(*l*) Section 14604, relating to unlawful use of a vehicle.

(m) Section 14610, relating to unlawful use of a driver's license.

(n) Section 14610.1, relating to identification documents.

(o) Section 15501, relating to use of false or fraudulent license by a minor.

SEC. 8. Section 40518 of the Vehicle Code is amended to read:

40518. (a) Whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged violation of Section 22451, or, based on an alleged violation of Section 21453, 21455, or 22101 recorded by an automated enforcement system pursuant to Section 21455.5 or 22451, and delivered by mail within 15 days of the alleged violation to the current address of the registered owner of the vehicle on file with the department, with a certificate of mailing obtained as evidence of service, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea. Preparation and delivery of a notice to appear pursuant to this section is not an arrest.

(b) A notice to appear shall contain the name and address of the person, the license plate number of the person's vehicle, the violation charged, including a description of the offense, and the time and place when, and where, the person may appear in court or before a person authorized to receive a deposit of bail. The time specified shall be at least 10 days after the notice to appear is delivered.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 9. Section 40518 is added to the Vehicle Code, to read:

40518. (a) Whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged violation of Section 22451, or, with respect to a rail crossing, of Section 21453 or 22101 based on an alleged violation recorded by an automated rail crossing enforcement system, and delivered by mail within 30 days of the alleged violation to the current address of the registered owner of the vehicle on file with the department, with a certificate of mailing obtained as evidence of service, an exact and legible duplicate copy of the notice when filed with the magistrate

shall constitute a complaint to which the defendant may enter a plea. Preparation and delivery of a notice to appear pursuant to this section is not an arrest.

(b) A notice to appear shall contain the name and address of the person, the license plate number of the person's vehicle, the offense charged, and the time and place when, and where, the person may appear in court or before a person authorized to receive a deposit of bail. The time specified shall be at least 10 days after the notice to appear is delivered.

(c) This section shall become operative on January 1, 1999.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 923

An act to add Section 11713.15 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 11713.15 is added to the Vehicle Code, to read:

11713.15. (a) (1) Prior to being issued a temporary branch license for selling new recreational vehicles, as defined in Section 18010 of the Health and Safety Code, at a show, a dealer shall submit to the department a manufacturer's written authorization for the sale specifying the dates of the show, the location of the show, and the makes of those new recreational vehicles being offered for sale.

(2) If nine or fewer dealers are participating in the show, a temporary branch license may only be issued to a dealer under this subdivision if the location of the show is 50 miles or less from that dealer's established place of business or permanent branch location.

Each dealer described in this paragraph shall certify in his or her application for a temporary branch license that the show location is

50 miles or less from his or her established place of business or permanent branch location.

(3) A temporary branch license may be issued to a dealer for purposes of participating in a show if all of the following conditions exist:

(A) The location of the show is 50 miles or more from the dealer's place of business or that dealer's branch locations, or both.

(B) Ten or more dealers apply for temporary branch licenses for purposes of participating in that show.

(C) Not less than 10 days prior to the conduct of the show, the department receives at least 10 applications for temporary branch licenses together at one of the department's field offices.

(b) (1) Any advertising and promotional materials designed to attract the public to attend a show of recreational vehicles where there are nine or fewer dealers participating shall include the business name of each participating dealer and that dealer's established place of business in a type size that is equivalent to the second largest type used in the advertisement or promotional materials. This information shall be placed at the top of any advertisement or promotional materials.

(2) If the recreational vehicles being offered for sale are used, the word "used" shall immediately precede the identification of the make of the vehicle or be immediately adjacent to the depiction of any used vehicles.

(3) In addition, the promoters of the show shall cause a sign to be conspicuously displayed at the major, public entrance leading directly to the show, printed in 50 point type, containing the information required in paragraph (1).

(c) A recreational vehicle dealer participating in a show for which a temporary branch license is required shall provide each buyer, prior to the sale of any vehicle at the show, a written statement disclosing the identity and the established business location of the dealer that has agreed to render service or warranty work with respect to the vehicle being purchased by the buyer, and if there is no agreement with any dealer to render the service or warranty, to state that fact.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 924

An act to amend Section 12927 of the Government Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 12927 of the Government Code is amended to read:

12927. As used in this part in connection with housing accommodations, unless a different meaning clearly appears from the context:

(a) "Affirmative actions" means any activity for the purpose of eliminating discrimination in housing accommodations because of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.

(b) "Conciliation council" means a nonprofit organization, or a city or county human relations commission, which provides education, factfinding, and mediation or conciliation services in resolution of complaints of housing discrimination.

(c) (1) "Discrimination" includes refusal to sell, rent, or lease housing accommodations; includes refusal to negotiate for the sale, rental, or lease of housing accommodations; includes representation that a housing accommodation is not available for inspection, sale, or rental when that housing accommodation is in fact so available; includes any other denial or withholding of housing accommodations; includes provision of inferior terms, conditions, privileges, facilities, or services in connection with those housing accommodations; includes the cancellation or termination of a sale or rental agreement; includes the provision of segregated or separated housing accommodations; includes the refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled person, if the modifications may be necessary to afford the disabled person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification (other than for reasonable wear and tear), and includes refusal to make reasonable accommodations in rules, policies, practices, or services

when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

(2) "Discrimination" does not include either of the following:

(A) Refusal to rent or lease a portion of an owner-occupied single-family house to a person as a roomer or boarder living within the household, provided that no more than one roomer or boarder is to live within the household, and the owner complies with subdivision (c) of Section 12955, which prohibits discriminatory notices, statements, and advertisements.

(B) Where the sharing of living areas in a single dwelling unit is involved, the use of words stating or tending to imply that the housing being advertised is available only to persons of one sex.

(d) "Housing accommodation" means any building, structure, or portion thereof that is occupied as, or intended for occupancy as, a residence by one or more families and any vacant land that is offered for sale or lease for the construction thereon of any building, structure, or portion thereof intended to be so occupied.

(e) "Owner" includes the lessee, sublessee, assignee, managing agent, real estate broker or salesperson, or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations, and includes the state and any of its political subdivisions and any agency thereof.

(f) "Person" includes all individuals and entities that are described in Section 3602(d) of Title 42 of the United States Code, and in the definition of "owner" in subdivision (e) of this section, and all institutional third parties, including the Federal Home Loan Mortgage Corporation.

(g) "Aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice or believes that the person will be injured by a discriminatory housing practice that is about to occur.

(h) "Real estate-related transactions" include any of the following:

(1) The making or purchasing of loans or providing other financial assistance that is for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or that is secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(3) The use of territorial underwriting requirements, for the purpose of requiring a borrower in a specific geographic area to obtain earthquake insurance, required by an institutional third party on a loan secured by residential real property.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to most effectively and efficiently implement the Fair Employment and Housing Act, it is necessary that this act take effect immediately.

CHAPTER 925

An act to add Section 2955.1 to the Civil Code, relating to secured obligations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 2955.1 is added to the Civil Code, to read:

2955.1. (a) Any lender originating a loan secured by the borrower's separate interest in a condominium project, as defined in subdivision (f) of Section 1351, which requires earthquake insurance or imposes a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third-party purchaser shall disclose all of the following to the potential borrower:

(1) That the lender or the institutional third party in question requires earthquake insurance or imposes a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third party purchaser.

(2) That not all lenders or institutional third parties require earthquake insurance or impose a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third party purchaser.

(3) Earthquake insurance may be required on the entire condominium project.

(4) That lenders or institutional third parties may also require that a condominium project maintain, or demonstrate an ability to maintain, financial reserves in the amount of the earthquake insurance deductible.

(b) For the purposes of this section, "institutional third party" means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, and other substantially similar institutions, whether public or private.

(c) The disclosure required by this section shall be made in writing by the lender as soon as reasonably practicable.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Legislature finds and declares that an institutional third party purchaser has imposed a new requirement on California lenders, which will become effective on or before July 1, 1995. Homebuyers and sellers need to be informed of their options concerning the new requirement as soon as possible to determine what options are available when the new requirement becomes operative.

CHAPTER 926

An act to add Chapter 2.6 (commencing with Section 6160) to Division 7 of Title 1 of the Government Code, relating to state government.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Chapter 2.6 (commencing with Section 6160) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 2.6. STATE PAYMENT CARD ACT

6160. The Legislature finds and declares that there are costs associated with all forms of payment, including cash and checks. The Legislature further finds and declares that by accepting payment by credit card or other payment devices, state agencies will be able to take advantage of new technologies that will improve their efficiency and will increase consumer convenience and choice by providing state consumers with an alternative method of payment.

6161. For the purposes of this chapter:

(a) "Cardholder" means a person making a payment to a state agency by credit card or payment device.

(b) "Credit card" shall have the same meaning as provided in subsection (k) of Section 1602 of Title 15 of the United States Code (Section 103(k) of the federal Truth in Lending Act, and regulations promulgated thereunder).

(c) "Director" means the Director of General Services.

(d) "In person" means from one natural person to another who, as an employee or other representative of a state agency, accepts payment and processes the payment according to the procedures of the agency.

(e) "Payment device" shall have the same meaning as the definition of "accepted card or other means of access" set forth in paragraph (1) of Section 1693a of Title 15 of the United States Code (Section 903(1) of the federal Electronic Fund Transfer Act), and for purposes of this chapter shall also include a card that enables a person

to pay for transactions through the use of value stored on the card itself.

(f) "Person" means a natural person or an organization, including a corporation, partnership, limited liability company, proprietorship, association, cooperative, estate, trust, or government unit.

(g) "State agency" shall have the same meaning as set forth in Section 11000.

6162. (a) Except as provided in Section 6159, the Director of General Services, or his or her designee, may negotiate and enter into any contracts necessary to implement or facilitate the acceptance of credit cards or payment devices by state agencies. The authority granted to the director pursuant to this section shall include the discretion to negotiate and agree to specific terms applicable to each state agency, including, but not limited to, the terms regarding any payment of fees to third parties for the acceptance of credit cards or payment devices, types of payments, any limitations on amounts and limits of liabilities that would be eligible for payment by credit card or payment device, and operational requirements.

(b) The director may seek to negotiate master contracts or other contracts that allow the cost-effective acceptance of payment by credit card or payment device. Additionally, the director or any state agency negotiating these contracts shall use its best efforts to minimize the financial impact of credit card or other payment device acceptance on the state agency, taxpayers, and the public who use its services.

6163. (a) (1) Except as provided in paragraphs (2) and (3), all state agencies shall, commencing on or before January 1, 1997, and thereafter, accept payment made by means of a credit card or payment device.

(2) (A) On or before June 30, 1996, a state agency may request that the director grant an exemption from paragraph (1) if the agency determines that its acceptance of payments by credit card or payment device would have any of the following results:

(i) It would not be cost-effective.

(ii) It would result in a net additional unfunded cost to the agency.

(iii) It would result in a shortfall of revenues to the State of California.

(B) A request made pursuant to this paragraph shall state the reasons for the agency's determination. The director may request additional information from the requesting agency, and shall approve or deny the exemption request within 60 days of the receipt of all relevant information from the agency.

(C) In determining cost effectiveness, an agency may consider more than one year. In determining the cost effectiveness of credit card and payment device acceptance, the state agency shall consider all factors relating to costs and savings associated with accepting credit cards and payment devices. However, an agency may accept payment by credit card or other payment device notwithstanding

the cost effectiveness, if, upon the agency's analysis, the additional level of customer service offered by these payment methods outweighs cost considerations.

(D) "Costs" for the purposes of this subdivision shall include, but not be limited to, the following:

(i) Amounts paid to a third party for accepting the credit card or payment device.

(ii) Equipment costs, including telephone and maintenance expenses.

(iii) Labor costs of the state agency related to processing payments made by a credit card or payment device.

(E) "Savings" for the purposes of this subdivision shall include, but not be limited to, the following:

(i) The use of the float by the applicable state agency.

(ii) Reduction in bank fees that would be charged for payments made by cash and checks.

(iii) The costs of handling cash, labor savings, theft or pilferage, reduced storage, and security and transit of handling and holding cash.

(iv) The costs of handling checks.

(v) Dishonored check costs.

(vi) Decreased facility needs.

(vii) Increased collection of mandated payments.

(viii) Increased sales of discretionary goods and services.

(ix) Reduced paperwork.

(x) Fewer in-person transactions, especially with the use of voice response units and kiosks.

(3) Notwithstanding paragraph (1), a state agency shall not accept payment by credit card or payment device if the state agency is unable to enter into the contracts on terms that are acceptable to the agency, or if the director acting on behalf of the agency is unable to enter into contracts on terms that are acceptable to the director and the agency, as are necessary to enable the agency to accept payment by credit card or payment device.

(4) If the Franchise Tax Board does not accept payment by credit card or payment device as a result of this subdivision, then the law regarding credit card payments in existence prior to the effective date of the legislation adding this chapter shall apply to the Franchise Tax Board.

(b) The director may establish procedures to delegate the authority granted under this chapter to other state agencies so that these agencies may enter into contracts for accepting credit cards or other payment device on behalf of the respective agency.

(c) For entities established under Article VI of the California Constitution, the authority of the director under this chapter shall rest with the administrative director of those entities.

(d) Any agency that is accepting payment by credit card or payment device, pursuant to the terms of any agreement entered into prior to January 1, 1997, need not comply with this section.

(e) Any agency that intends to accept payment by credit card or payment device pursuant to a master contract entered into by the director shall transmit a letter of intent so stating to the director on or before June 30, 1996.

6164. No officer or employee of a state agency, or other individual, who in the course of his or her employment or duty has or had access to credit card or payment device information provided to the state agency under this chapter shall disclose or make known in any manner information provided under this chapter or use the information for any unauthorized purpose. Any violation of this section shall be a misdemeanor.

6165. The Department of General Services and state agencies shall enter into interagency agreements to reimburse the Department of General Services for its costs in entering into contracts pursuant to this chapter.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 927

An act to amend Sections 44258.3 and 44258.7 of the Education Code, relating to teaching credentials.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 44258.3 of the Education Code is amended to read:

44258.3. (a) The governing board of a school district may assign the holder of a credential, other than an emergency permit, to teach any subjects in departmentalized classes in kindergarten or any of grades 1 to 12, inclusive, provided that the governing board verifies,

prior to making the assignment, that the teacher has adequate knowledge of each subject to be taught and the teacher consents to that assignment. The governing board shall adopt policies and procedures for the purpose of verifying the adequacy of subject knowledge on the part of each of those teachers. The governing board shall involve subject matter specialists in the subjects commonly taught in the district in the development and implementation of the policies and procedures, and shall include in those policies and procedures both of the following:

(1) One or more of the following ways to assess subject matter competence:

(A) Observation by subject matter specialists, as defined in subdivision (d).

(B) Oral interviews.

(C) Demonstration lessons.

(D) Presentation of curricular portfolios.

(E) Written examinations.

(2) Specific criteria and standards for verifying adequacy of subject matter knowledge using any of the methods in paragraph (1) . The criteria shall include, but need not be limited to, evidence of the candidate's knowledge of the subject matter to be taught, including demonstrated knowledge of the curriculum framework for the subject to be taught and the specific content of the course of study in the school district for the subject, at the grade level to be taught.

(b) Teaching assignments made pursuant to this section shall be valid only in that school district. The principal of the school, or other appropriate administrator, shall notify the exclusive representative of the certificated employees for that school district, as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, of each instance in which a teacher is assigned to teach classes pursuant to this section. Any school district policy or procedures adopted and teaching assignments made pursuant to this section shall be included in the report required by subdivisions (a) and (e) of Section 44258.9. The Commission on Teacher Credentialing may suspend the authority of a school district to use the teaching assignment option authorized by this section upon a finding that the school district has violated the provisions of this section.

(c) Nothing in this section shall be construed to alter the effect of Section 44955 with regard to the reduction by a school district governing board of the number of certificated employees.

(d) For the purposes of this section, "subject matter specialists" are mentor teachers, curriculum specialists, resource teachers, classroom teachers certified to teach a subject, staff to regional subject matter projects or curriculum institutes, or college faculty.

SEC. 2. Section 44258.7 of the Education Code is amended to read:

44258.7. (a) The holder of a standard secondary credential who, prior to September 1, 1989, has taught successfully in a subject within the department of his or her academic major or minor for a minimum of three years, as verified by the employing school district, may receive a supplementary authorization in that subject upon application, payment of a fee, which shall not exceed one-half of the regular credential fee, and evidence that one of the following has been accomplished:

(1) Successful completion, by September 1, 1989, of a minimum of 12 semester units, or six upper division or graduate units, of coursework at an accredited institution in the subject.

(2) The securing of a passing score on an examination in the subject approved by the Commission on Teacher Credentialing.

(3) Verification of competence in the subject matter by a subject area specialist not associated with the employing school district.

(b) A person who holds a teaching credential in a subject or subjects other than physical education may be authorized by action of the local governing board to coach one period per day in a competitive sport for which students receive physical education credit, provided that he or she is a full-time employee of the school district and has completed a minimum of 20 hours of first aid instruction appropriate for the specific sport.

(c) A teacher employed on a full-time basis who teaches kindergarten or any of grades 1 to 12, inclusive, and who has special skills and preparation outside of his or her credential authorization may, with his or her consent, be assigned to teach an elective course in the area of the special skills or preparation , provided that the assignment is first approved by a committee on assignments. For purposes of this subdivision an "elective course" is a course other than English, mathematics, science, or social studies. The membership of the committee on assignments shall include an equal number of teachers, selected by teachers, and school administrators, selected by school administrators.

(d) Assignments approved by the committee on assignments shall be for a maximum of one school year, but may be extended by action of the committee upon application by the schoolsite administrator and the affected teacher. All initial assignments or extensions shall be approved prior to the assignment or extension. Districts making assignments under this subdivision shall submit a plan to the county superintendent of schools which shall include, but need not be limited to, the following:

(1) Statements signed by the district superintendent and the president or chairperson of the district governing board, approving the establishment of the committee.

(2) Procedures for selection of the committee membership.

(3) Terms of office for committee members.

(4) Criteria for determining teachers' qualifications for these assignments.

(e) The Commission on Teacher Credentialing may develop and recommend general criteria that may be used by local committees on assignment in assessing a candidate's qualifications.

CHAPTER 928

An act to amend Sections 1777.2 and 1784 of the Fish and Game Code, and to add Article 8.5 (commencing with Section 560) to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 1777.2 of the Fish and Game Code is amended to read:

1777.2. "Bank site" or "mitigation bank site" means a publicly or privately owned and operated site on which wetlands have been or will be created in accordance with this chapter to compensate for adverse impacts caused by removal or fill permit activities authorized pursuant to Section 404 of the federal Clean Water Act (33 U.S.C. Sec. 1344 et seq.). "Bank site" or "mitigation bank site" may include land on which rice is grown as long as those lands are managed as ricelands and those lands meet the other requirements of Section 1784.

SEC. 2. Section 1784 of the Fish and Game Code is amended to read:

1784. (a) The department, in cooperation with those agencies specified in Section 1786, shall adopt regulations that establish standards and criteria for the bank site qualification process, for the evaluation of wetland habitat values created at the bank sites, and for the operation and evaluation of bank sites, and any other regulations that are necessary to implement this chapter.

These criteria shall require, at a minimum, that the newly created wetland provide the hydrologic, vegetative, and wildlife characteristics, including the food web components, of a naturally occurring wetland system that is equal to the site being mitigated.

(b) With respect to bank site standards and operator qualifications, the department shall consider, at a minimum, all of the following criteria:

(1) A requirement that the bank site have a reliable, adequate, and available water supply necessary to provide wetland values. For wetlands dependent only on rainfall, rainfall satisfies this requirement.

(2) The relative ease or difficulty of converting uplands into wetlands at the bank site.

(3) The anticipated maintenance necessary to sustain the recreated and created wetlands at the bank site.

(4) The proximity of the bank site to other established preserves or natural features historically associated with abundant wildlife values.

(5) The proximity of the bank site to urban or populated areas that could reduce the bank site's long-term biological values.

(6) The demonstrated ability of the bank site operator to create, administer, maintain, and protect the bank site in perpetuity in its enhanced state, including financial, technical, and management ability.

(7) The relative abundance or scarcity of the wetland type to be created at the bank site.

(c) A bank site or mitigation bank site may include any lands on which rice is grown as long as those lands are managed as ricelands with the required enhanced wetland values if they otherwise qualify under this chapter and either of the following conditions exist:

(1) The lands are lands on which rice was grown after January 1, 1996. For purposes of this paragraph, to qualify as new wetland values, rice shall not have been grown on the lands for 10 years before the application is submitted pursuant to Section 1785.

(2) The lands are lands on which rice was grown before January 1, 1996. These lands shall qualify only if there is an increase in wetland habitat value that is equal to the site being mitigated. For purposes of this paragraph, a wetland value shall only be provided for lands on which rice was grown that are proposed for wetlands mitigation for the period when that land is flooded between the harvesting of rice and the planting of the next crop. This paragraph shall apply only to lands that were not flooded after harvest between January 1, 1982, and January 1, 1992.

(d) Any mitigation site established pursuant to subdivision (c) may be replaced by a new site of an equal wetland value.

(e) This section shall not be construed to permit waters used to flood rice fields in order to create wetlands mitigation to be credited as beneficial to wildlife under federal law.

SEC. 3. Article 8.5 (commencing with Section 560) is added to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, to read:

Article 8.5. The Cannella Environmental Farming Act of 1995

560. This article shall be known as the Cannella Environmental Farming Act of 1995.

561. The Legislature finds and declares the following:

(a) California agriculture helps to feed the world and fuel our economy. Agriculture provides one out of every 10 jobs in California,

and our state has led the nation in total farm production every year since 1948. During 1993, California's 76,000 farms generated nearly $20 billion in cash receipts and another $70 billion in economic activity.

(b) Many farmers engage in practices that contribute to the well-being of ecosystems, air quality, and wildlife and their habitat. Agriculture plays a pivotal role in preserving open space that is vital to the environment. Seventy-five percent of the nation's wildlife live on farms and ranches. Freshwater streams and stockponds on farms and ranches provide habitat to millions of fish. Corn, wheat, rice, and other field crops provide bountiful food and habitat for deer, antelope, ducks, geese, and other wildlife.

(c) Environmental laws should be based on the best scientific evidence gathered from public and private sources.

(d) Best scientific evidence should include the net environmental impact provided by agriculture.

(e) Additional research is necessary to adequately inventory the impact that agriculture has on the environment. Recognition should be afforded to agricultural activities that produce a net benefit for the environment, which is consistent with the growing trend of providing incentives for the private sector to undertake economic activities that benefit the environment.

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

(a) "Agricultural activities" means those activities that generate products as specified in Section 54004.

(b) "Department" means the Department of Food and Agriculture.

(c) "Panel" means the Scientific Advisory Panel on Environmental Farming.

(d) "Secretary" means the Secretary of Food and Agriculture.

566. (a) The department shall establish and oversee an environmental farming program. The program shall provide incentives to farmers whose practices promote the well-being of ecosystems, air quality, and wildlife and their habitat.

(b) The department may assist in the compilation of scientific evidence from public and private sources, including the scientific community, industry, conservation organizations, and federal, state, and local agencies identifying the net environmental impacts that agriculture creates for the environment. The department shall serve as the depository of this information and provide it to federal, state, and local governments, as needed.

(c) The department shall conduct the activities specified in this article with existing resources, to the extent they are available.

568. (a) The secretary shall convene a five-member Scientific Advisory Panel on Environmental Farming to advise and assist federal, state, and local government agencies on issues relating to air, water, and wildlife habitat to do the following:

(1) Review data on the impact that agriculture has on the environment and recommend to appropriate state agencies data that the panel approves as scientifically valid. A state agency that receives data recommended by the panel may adopt and incorporate the data into the appropriate program. If a state agency does not utilize the data recommended by the panel, it shall provide the panel with a written statement of reasons for not utilizing the data. The reasons, at a minimum, shall specify the scientific basis for not utilizing the data. The reasons shall be provided within 180 days of receiving the data from the panel.

(2) Compile the net environmental impacts that agriculture creates for the environment, identified pursuant to paragraph (1).

(3) Research, review, and comment on data upon which proposed environmental policies and regulatory programs are based to ensure that the environmental impacts of agricultural activities are accurately portrayed and to identify incentives that may be provided to encourage agricultural practices with environmental benefits.

(4) Assist government agencies to incorporate benefits identified pursuant to paragraph (1) into environmental regulatory programs.

(b) Members of the panel shall be highly qualified and professionally active or engaged in the conduct of scientific research. Of the members first appointed to the panel, two shall serve for a term of two years and three shall serve for a term of three years, as determined by lot. Thereafter, members shall be appointed for a term of three years. The members shall be appointed as follows:

(1) Three members shall be appointed by the secretary. At least one of these members shall have a minimum of five years of training and experience in the field of agriculture and shall represent production agriculture.

(2) One member, who has a minimum of five years of training and experience in the field of human health or environmental science, shall be appointed by the Secretary of the Environmental Protection Agency.

(3) One member, who has a minimum of five years of training and experience in the field of resource management, shall be appointed by the Secretary of the Resources Agency.

(c) The panel may establish ad hoc committees, which may include professionals or scientists, to assist it in performing its functions.

(d) The panel shall be created and maintained with funds made available from existing resources within the department to the extent they are available.

CHAPTER 929

An act to amend Sections 44011, 44091, 44092, and 44094 of, to add Article 10 (commencing with Section 44100) to Chapter 5 of Part 5 of Division 26 of, and to repeal Section 44095 of, the Health and Safety Code, and to amend Section 1808.23 of, to add Section 4000.7 to, and to repeal Section 4000.6 of, the Vehicle Code, relating to air pollution.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 44011 of the Health and Safety Code, as amended by Chapter 27 of the Statutes of 1994, is amended to read:

44011. (a) All motor vehicles powered by internal combustion engines which are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for all of the following:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle which has been issued a certificate of compliance or noncompliance or an emission cost waiver upon a change of ownership or initial registration in this state during the preceding six months, or which has been issued a certificate of exemption pursuant to Section 4000.6 or 4000.7 of the Vehicle Code.

(3) Any motor vehicle manufactured prior to the 1966 model-year.

(4) Any other motor vehicle which the department determines would present prohibitive inspection or repair problems.

(5) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

SEC. 2. Section 44011 of the Health and Safety Code, as amended by Section 20 of Chapter 1192 of the Statutes of 1994, is amended to read:

44011. (a) Except for the motor vehicles specified in subdivision (c), any motor vehicle powered by an internal combustion engine which is registered within an area designated for program coverage within the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District, which has been operated in excess of the applicable target pollution miles for that vehicle, shall be required annually to obtain a certificate of compliance or noncompliance.

(b) Except for the motor vehicles specified in subdivision (c), all other motor vehicles powered by internal combustion engines which are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance.

(c) The following motor vehicles are not required to obtain a certificate of compliance or noncompliance:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle which has been issued a certificate of compliance or noncompliance or an emission cost waiver upon a change of ownership or initial registration in this state during the preceding six months, or which has been issued a certificate of exemption pursuant to Section 4000.6 or 4000.7 of the Vehicle Code.

(3) Any motor vehicle manufactured prior to the 1966 model-year.

(4) Any other motor vehicle which the department determines would present prohibitive inspection or repair problems.

(5) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(d) Vehicles that are designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(e) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 3. Section 44011 of the Health and Safety Code, as amended by Section 20.5 of Chapter 1192 of the Statutes of 1994, is amended to read:

44011. (a) All motor vehicles powered by internal combustion engines which are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for all of the following:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle which has been issued a certificate of compliance or noncompliance or an emission cost waiver upon a change of ownership or initial registration in this state during the preceding six months, or which has been issued a certificate of exemption pursuant to Section 4000.7 of the Vehicle Code.

(3) Any motor vehicle manufactured prior to the 1966 model-year.

(4) Any other motor vehicle which the department determines would present prohibitive inspection or repair problems.

(5) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside

the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(c) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 4. Section 44091 of the Health and Safety Code is amended to read:

44091. (a) The High Polluter Repair or Removal Account is hereby created in the Vehicle Inspection and Repair Fund. All money deposited in the account pursuant to this article and paragraphs (1) and (2) of subdivision (b) of Section 4000.7 of the Vehicle Code shall be available, upon appropriation by the Legislature, to the department and the state board to establish and implement a program for the repair or replacement of high polluters pursuant to this article and Article 10 (commencing with Section 44100).

(b) The department may accept donations or grants of funds from any person for purposes of the program and shall deposit that money in the account. Donations, grants, or other commitments of money to the account may be dedicated for specific purposes consistent with the uses of the account, including, but not limited to, purchasing higher emitting vehicles for the purpose of achieving the emission reductions required by the M-1 strategy of the 1994 state implementation plan (SIP).

(c) The funds which are available in the account in any fiscal year for a particular area that is subject to an inspection and maintenance program shall be determined by calculating the percentage of vehicles registered in that area to the total number of vehicles registered in areas that are subject to inspection and maintenance programs. That percentage shall be the percentage of the total funds allocated to the program in that fiscal year which are available for that particular area.

(d) During any fiscal year, the percentage of money in the account expended for repair assistance, removal and related administration costs, shall be set by the department and, shall be available for the following purposes in the following amounts:

(1) Until the emission reductions required by the M-1 strategy of the 1994 SIP are achieved, 50 percent of the funds deposited in the account pursuant to paragraphs (1) and (2) of subdivision (b) of Section 4000.7 of the Vehicle Code that are allocated to the south coast district area pursuant to subdivision (c), plus all other money deposited in the account and dedicated to achieving the emission reductions required by the M-1 strategy of the 1994 SIP, shall be available to the state board for the purposes described in subdivision (b) of Section 44104. All emission reductions achieved by using the funds described in this paragraph shall be credited to the M-1

strategy. Funds allocated for purposes of this paragraph that are unused in any fiscal year shall be carried over to achieve the M-1 emission reduction objectives in subsequent years.

(2) Funds appropriated pursuant to subdivision (a) of Section 44104 shall be available to the state board for the purpose of performing the rulemaking, vehicle testing, and other technical work required to implement the program described in Article 10 (commencing with Section 44100).

(3) The balance of this portion of the account shall be available to the department for repairing or removing high-emitting vehicles, and shall be apportioned based on the relative cost-effectiveness of repair or removal, as determined by the department.

(e) In no case shall the funding available in any subsequent fiscal year to the department for repairing or removing high-emitting vehicles under the inspection and maintenance program be less than the amount made available from the Vehicle Inspection and Repair Fund for that purpose in the 1995–96 fiscal year.

SEC. 5. Section 44092 of the Health and Safety Code is amended to read:

44092. The high-polluter repair or removal program shall be designed to repair or remove motor vehicles registered in this state that are subject to an inspection and maintenance program and are producing high levels of emissions as a result of their use in this state.

SEC. 6. Section 44094 of the Health and Safety Code is amended to read:

44094. (a) Participation in the high polluter repair or removal program specified in this article and Article 10 (commencing with Section 44100) shall be voluntary and shall be available to the owners of high polluters that are registered in an area that is subject to an inspection and maintenance program, have been registered for at least 24 months in the district where the credits are to be applied and, are presently operational, and meet other criteria, as determined by the department.

(b) The program shall provide for both of the following:

(1) As to the repair of a high polluter, payment to the owner of up to 80 percent of the total cost of repair, as determined by the department, but the payment shall not exceed four hundred fifty dollars ($450).

(2) As to the removal of a high polluter, the program shall be subject to Article 10 (commencing with Section 44100).

(c) The department may authorize participation in the program based on a reasonable estimate of the future revenues that will be available to the program.

SEC. 7. Article 10 (commencing with Section 44100) is added to Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, to read:

Article 10. Accelerated Light-Duty Vehicle Retirement Program

44100. The Legislature hereby finds and declares as follows:

(a) Emission reduction programs based on market principles have the potential to provide equivalent or superior environmental benefits when compared to existing controls at a lower cost to the citizens of California than traditional emission control requirements.

(b) Several studies have demonstrated that a small percentage of light-duty vehicles contribute disproportionately to the on-road emissions inventory. Programs to reduce or eliminate these excess emissions can significantly contribute to the attainment of the state's air quality goals.

(c) Programs to accelerate fleet turnover can enhance the effectiveness of the state's new motor vehicle standards by bringing more low-emission vehicles into the on-road fleet earlier.

(d) The California State Implementation Plan for Ozone (SIP), adopted November 15, 1994, and submitted to the Environmental Protection Agency, calls for added reductions in reactive organic gases (ROG) and oxides of nitrogen (NO_x) from light-duty vehicles by the year 2010. One of the more market-oriented approaches reflected in the SIP, known as the M-1 strategy, calls for accelerating the retirement of older light-duty vehicles in the South Coast Air Quality Management District to achieve the following emission reductions:

Year	Emissions, TPD (tons per day) (ROG +NOx)
1999	9
2002	14
2005	20
2007	22
2010	25

(e) A program for achieving those and more emission reductions should be based on the following principles:

(1) The first two years should include a thorough assessment of the costs and short-term and long-term emission reduction benefits of the program, compared with other emission reduction programs for light-duty vehicles, which shall be reflected in a report and recommendations by the state board to the Governor and the Legislature on strategies and funding needs for meeting the emission reduction requirements of the M-1 strategy of the 1994 SIP for the years 1999 to 2010, inclusive.

(2) The program should first contribute to the achievement of the emission reductions required by the inspection and maintenance program and the M-1 strategy of the 1994 SIP, and should permit the use of mobile source emission reduction credits for other purposes

currently authorized by the state board or a district. Remaining credits may be used to achieve other emission reductions, including those required by the 1994 SIP, in a manner consistent with market-based strategies. Emission credits shall not be used to offset emission standards or other requirements for new vehicles, except as authorized by the state board.

(3) Participation by the vehicle owner shall be entirely voluntary and the program design should be sensitive to the concerns of car collectors and to consumers for whom older vehicles provide affordable transportation.

(4) The program design shall provide for real, surplus, and quantifiable emission reductions, based on an evaluation of the purchased vehicles, taking into account factors that include per-mile emissions, annual miles driven, remaining useful life of retired vehicles, and emissions of the typical or average replacement vehicle, as determined by the state board. The program shall ensure that there is no double counting of emission credits among the various vehicle removal programs.

(5) The program should specify the emission reductions required and then utilize the market to ensure that these reductions are obtained at the lowest cost.

(6) The program should be privately operated. It should utilize the experience and expertise gained from past successful programs. Existing entities that are authorized by, contracted with, or otherwise sanctioned by a district and approved by the state board and the United States Environmental Protection Agency shall be fully utilized for purposes of implementing this article. Nothing in this paragraph restricts the Department of Consumer Affairs from selecting qualified contractors to operate or administer any program specified pursuant to this chapter.

(7) The program should be designed insofar as possible to eliminate any benefit to any participants from vehicle tampering and other forms of cheating. To the extent that tampering and other forms of cheating might be advantageous, the program design shall include provisions for monitoring the occurrence of tampering and other forms of cheating.

(8) Emission credits should be expressed in pounds or other units, and their value should be set by the marketplace. Any contract between a public entity and a private party for the purchase of emission credits should be based on a price per pound which reflects the market value of the credit at its time of purchase. Emission reductions required by the M-1 and other strategies of the 1994 SIP shall be accomplished by competitive bid among private businesses solicited by the oversight agency designated pursuant to Section 44105.

44101. Not later than June 30, 1997, the state board shall adopt, by regulation, a statewide program to commence in 1997 that does all of the following:

(a) Provides for the creation, exchange, use, and retirement of light-duty vehicle mobile source emission reduction credits. The credits shall be fungible and exchangeable in the marketplace, and shall reflect the actual emissions of the vehicles that are retired or otherwise disposed of, by measurement, appropriate sampling, or correlations developed from appropriate sampling. The numerical value of credits may be constant over a defined lifetime, or may decline with age measured from the time of origination of the credits. In all cases, the numerical value of the credits shall reflect the useful life expectancies and the projected in-use emissions of the retired vehicles in a manner consistent with the assumptions used in determining the emissions inventory. The credits shall be fully recognized by the United States Environmental Protection Agency, the state board, and the districts.

(b) Sets out the criteria for retiring or otherwise disposing of high-emitting vehicles purchased for this program.

(c) Authorizes the issuance of those credits to private entities that purchase and properly retire high-emitting vehicles.

(d) Authorizes the resale of those credits to public or private entities to be used to achieve the emission reduction requirements of the 1994 state implementation plan, meet the requirements of the inspection and maintenance program, satisfy compliance with other emission reduction mandates, as determined by the district or the state board, create local growth allowances, or satisfy new or modified source emission offset requirements. Nothing in this article limits a district's authority to apply emission discount factors pursuant to district rules that regulate emissions banks, trades, or offsets.

(e) Provides for the retirement of those credits when used.

(f) Includes accounting procedures to credit emissions reductions achieved through vehicle scrappage to the M-1 strategy of the 1994 SIP and the inspection and maintenance program.

(g) Contains a program plan pursuant to Section 44104.5.

(h) Satisfies the attributes described in subdivision (e) of Section 44100.

44102. (a) The state board, the Department of Motor Vehicles, and the department shall harmonize the requirements and implementation of this program with the motor vehicle inspection program and other programs contained in this chapter, particularly the provisions relating to gross polluters in Article 8 (commencing with Section 44080) and the repair or removal of high polluters in Article 9 (commencing with Section 44090).

(b) Insofar as practicable, these programs shall be seamless to the participants and the public.

44103. Notwithstanding any other provision of law, the program shall also do all of the following:

(a) Enable the resale of impounded vehicles into the retirement program, consistent with the acceptance criteria of this program.

(b) Authorize the Department of Motor Vehicles, at the request of persons engaged in the purchase and retirement of vehicles under the program, to send notices to vehicle owners who are candidates for the sale of vehicles under the program describing the opportunity to participate in the program. The Department of Motor Vehicles may recover all costs of those notifications from the requesting party or parties.

(c) Allow the issuance of nonrevivable junk certificates for vehicles retired under the program, which shall allow program vehicles to be scrapped only for parts, except those parts identified pursuant to subdivision (a) of Section 44120.

44104. (a) Funds shall be available to the state board from the High Polluter Repair or Removal Account created pursuant to subdivision (a) of Section 44091. Those funds shall be used to perform the rulemaking, vehicle testing, and other technical work necessary to achieve the objectives set forth in Sections 44101 and 44104.5. Those administrative expenditures shall not exceed a total of three million dollars ($3,000,000) over the first three years of the program.

(b) Funds available to the state board pursuant to paragraph (1) of subdivision (d) of Section 44091 shall be used to purchase and retire mobile source emission reduction credits resulting from the retirement of light-duty vehicles pursuant to this article for the purpose of achieving the emission reductions required by the M-1 strategy of the 1994 SIP. If offers from authorized private scrapping entities are deemed, by the department, consistent with the criteria set forth in Section 44101, to be noncompetitive in cost-effectiveness, in terms of dollars per ton of emissions reduced, the department shall directly purchase vehicles from owners in order to achieve the greatest reduction in emissions at the least cost. If these purchases, in turn, are deemed by the department to be not cost-competitive, in terms of dollars per ton of emissions reduced, with other strategies identified by the state board, the department shall use the funds to pursue other more cost-effective strategies identified by the state board. All emission reduction credits purchased with the funds described in this paragraph shall be retired and credited to the M-1 strategy of the 1994 SIP.

(c) This article shall not create an obligation on the part of any state or local agency to expend money, incur substantial administrative costs, or purchase credits to meet the M–1 requirements of the 1994 State Implementation Plan until the Director of Finance certifies that there are sufficient funds in the High Polluter Repair or Removal Account for purposes of the article.

(d) This article shall not create an obligation to use existing funds that are currently used to meet other air quality mandates, including funds collected pursuant to Sections 44223, 44225, 44227, and 44243, for purchasing credits to satisfy the M-1 or other strategies of the 1994 SIP.

(e) The state board and the department shall seek federal funds to be deposited in the High Polluter Repair or Removal Account, and shall explore the availability of other funding sources, such as private contributions, the Petroleum Violation Escrow Account, and proceeds from fees, fines, or other penalties resulting from fuel specification violations.

44104.5. (a) The regulations adopted pursuant to subdivision (a) of Section 44101 shall include a plan to guide the execution of the first two years of the program, to assess the results, and to formulate recommendations. The plan shall also verify whether the light-duty vehicle scrapping program included in the state implementation plan adopted on November 15, 1994, can reasonably be expected to yield the required emissions reductions at reasonable cost-effectiveness. Scrapping of any vehicles under this program for program development or testing or for generating emission reductions to be credited against the M-1 strategy of the 1994 SIP may proceed before the state board adopts the regulations pursuant to subdivision (a) of Section 44101 or the plan required by this subdivision. The emission credits assigned to these vehicles shall be adjusted as necessary to ensure that those credits are consistent with the credits allowed under the regulations adopted pursuant to Section 44101. The plan shall include a baseline study, for the geographical area or areas representative of those to be targeted by this program and by measure M-1 in the SIP, of the current population of vehicles by model year and market value and the current turnover rate of vehicles, and other factors that may be essential to assessing program effectiveness, cost-effectiveness, and market impacts of the program.

(b) At the end of each of the two calendar years after the adoption of the program plan, the state board, in consultation with the department, shall adopt and publish a progress report evaluating each year of the program. These reports shall address the following topics for those vehicles scrapped to achieve both the M-1 SIP objectives and those vehicles scrapped or repaired to generate mobile-source emission reduction credits used for other purposes:

(1) The number of vehicles scrapped or repaired by model year.

(2) The measured emissions of the scrapped or repaired vehicles tested during the report period, using suitable inspection and maintenance test procedures.

(3) Costs of the vehicles in terms of amounts paid to sellers, the costs of repair, and the cost-effectiveness of scrappage and repair expressed in dollars per ton of emissions reduced.

(4) Administrative and testing costs for the program.

(5) Assessments of the replacement vehicles or replacement travel by model year or emission levels, as determined from interviews, questionnaires, diaries, analyses of vehicle registrations in the study region, or other methods as appropriate.

(6) Assessments of the net emission benefits of scrapping in the year reported, considering the scrapped vehicles, the replacement vehicles, the effectiveness of repair, and other effects of the program on the mix of vehicles and use of vehicles in the geographical area of the program, including in-migration of other vehicles into the area and any tendencies to increased market value of used vehicles and prolonged useful life of existing vehicles, if any.

(7) Assessments of whether the M-1 strategy of the 1994 SIP can reasonably be expected to yield the required emission reductions.

(c) Not later than June 30, 1999, and every three years thereafter, the state board, in consultation with the department, shall evaluate the performance of the programs specified in Article 9 (commencing with Section 44090) and this article and, based on that evaluation, report to the Governor and Legislature. The report shall evaluate the overall performance of the program, including its cost-effectiveness in terms of dollars per ton of credited or reduced emissions, description of the methods and procedures to assure that the emission reductions are real, surplus, and quantifiable, the extent of the market for eligible vehicles, a recommendation for an appropriate allocation of expenditures between removal or repair of vehicles that reflects the relative cost-effectiveness of the options, and any other recommendation for improving the effectiveness of these programs. This report shall also contain all of the following:

(1) Identification of procedures for distinguishing the emission reductions attributed to scrapping for the purpose of generating emission reductions credits and scrapping that occurs or would have occurred as a result of the inspection and maintenance program managed by the Department of Consumer Affairs and other programs.

(2) A projection of the emissions reductions and cost-effectiveness that might be realized by scrapping or repairing light-duty vehicles through the year 2010, considering changes expected in the vehicle fleet and likely impacts of scrapping or repair on the mix and emissions of vehicles.

(3) A comparison of the effectiveness of scrappage, repair, or upgrade to other programs for light-duty vehicles.

(4) A recommended scrapping program, or other more cost-effective means, for continuing to achieve the emissions reductions required by the M-1 strategy of the 1994 State Implementation Plan, considering likely emission reductions in the attainment year costs, cost-effectiveness,, issues of monitoring and verification, and status of the Environmental Protection Agency's approval of the state's 1994 SIP.

44105. The regulations shall specify that the program shall be operated as a privately operated program under the oversight of a state agency to be designated by the Governor. In consultation with the districts and interested parties, the state oversight agency shall

be responsible for the implementation of the program, including the following:

(a) Solicitation and analysis of public comments on the overall program goals, objectives, and design.

(b) Development of the program structure.

(c) Overall quality control, including verifying emission reductions and certification of the emission reduction credits.

(d) Definition of terms such as "high emitter," "collector interest vehicles," and "nonrevivable junk certificates."

44106. The program shall include provisions for monitoring and preventing all forms of tampering or other forms of cheating, and shall effectively address "avoidance vehicles" such as nonregistered vehicles and vehicles lacking a sufficient inspection and maintenance history. If fraud is detected, the program shall include provisions for suspending all new transactions with the entity suspected of fraud until problems are corrected and revaluing all credits used to meet the emissions reduction requirements. Contracts with authorized entities shall include remedies in cases of fraud.

44107. The program shall discourage tampering and other forms of cheating, and effectively address "avoidance vehicles," such as nonregistered vehicles and vehicles lacking a sufficient inspection and maintenance history.

44109. The program shall include appropriate means to solicit vehicle owners, including mass mailings, media advertising, news coverage, and direct mail to owners of candidate vehicles, and may include high-emitting vehicles based on smog check or remote sensing or high-emitter profile information.

44115. The program shall ensure that vehicle purchase transactions are convenient to vehicle owners, including advance screening to reasonably assure that vehicles qualify for the program.

44120. Vehicle disposal under the program shall be consistent with appropriate state board guidance and provisions of the Vehicle Code dealing with vehicle disposal and parts reuse, and shall do both of the following:

(a) Allow for trading, sale, and resale of the vehicles between licensed auto dismantlers or other appropriate parties to maximize the salvage value of the vehicles through the recycling, sales, and use of parts of the vehicles, consistent with the Vehicle Code and appropriate state board guidelines.

(b) Set aside and resell to the public any vehicles with special collector interest. No emission reduction credit shall be generated for vehicles that are resold to the public. Vehicles acquired for their collector interest shall be properly repaired to meet minimum established vehicle emission standards before reregistration, unless the vehicle is sold with a nonrepairable vehicle certificate or a nonrevivable junk certificate.

44121. The state board shall develop standards for the certification and use of emission reduction credits to ensure that the

credits are real, surplus, and quantifiable after accounting for program uncertainties.

44122. Emission reductions achieved from retired vehicles shall be quantified as follows:

(a) Vehicle emissions shall be based on either direct testing, statistical sampling, or emission modeling methods. Sampling of a statistically significant portion of the vehicles may be used to estimate emission benefits or to develop and validate correlations for use in estimating emission benefits.

(b) A reasonably reliable mechanism shall be applied to estimate vehicle miles traveled and the remaining useful life of each purchased vehicle. The odometer reading shall be matched on each purchased vehicle with the records of the Department of Motor Vehicles and smog check records to verify driving history, or statistical data shall be used to estimate vehicle use.

(c) An annual survey shall be performed of a statistically meaningful number of participants to determine replacement vehicle and post-participation behavior and also to determine the extent, if any, of in-migration of low-cost vehicles due to price increases in the scrapping market area resulting from the scrap program.

SEC. 8. Section 4000.6 of the Vehicle Code is repealed.

SEC. 9. Section 1808.23 of the Vehicle Code is amended to read:

1808.23. (a) Section 1808.21 does not apply to a vehicle manufacturer licensed to do business in this state if the manufacturer, or its agent, under penalty of perjury, requests and uses the information only for the purpose of safety, warranty, including a warranty issued in compliance with Section 1795.92 of the Civil Code, emission, or product recall if the manufacturer offers to make and makes any changes at no cost to the vehicle owner.

(b) Section 1808.21 does not apply to a dealer licensed to do business in this state if the dealer, or its agent, under penalty of perjury, requests and uses the information only for the purpose of completing registration transactions and documents.

(c) Section 1808.21 does not apply to a person who, under penalty of perjury, requests and uses the information as permitted under subdivision (h) of Section 1798.24 of the Civil Code, if the request specifies that no persons will be contacted by mail or otherwise at the address included with the information released. The information released by the department under this subdivision shall not be in a form that identifies any person.

(d) Residential addresses released under this section shall not be used for direct marketing or solicitation for the purchase of any consumer product or service, unless the person is participating in a vehicle retirement program to reduce air pollution pursuant to Article 10 (commencing with Section 44100) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code.

SEC. 10. Section 4000.7 is added to the Vehicle Code, to read:

4000.7. (a) For purposes of subdivision (a) of Section 4000.3, for any vehicle which is registered for the first time in this state on or after January 1, 1994, the first certificate of compliance shall be required upon the second renewal of its registration.

(b) (1) Commencing not later than October 1, 1996, at the time of application and payment for the second renewal of the registration of a new motor vehicle which is subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, the department shall solicit an additional payment which may, at the option of the applicant, be made to the department. The Department of Consumer Affairs shall determine the amount of the additional payment, but the amount shall not exceed fifty dollars ($50). In soliciting the additional payment in the application for the second renewal, the department shall include a brief summary of the air quality benefits being achieved by the inspection and maintenance and high-polluter repair or removal programs. The Legislature hereby finds and declares that the payment is in the nature of a donation for purposes of the high-polluter repair or removal program established pursuant to Article 9 (commencing with Section 44090), and the accelerated light-duty vehicle retirement program established pursuant to Article 10 (commencing with Section 44100), of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code.

(2) (A) On a monthly basis, the department shall transmit all payments received pursuant to paragraph (1), including any accrued interest, to the Treasurer for deposit in the High Polluter Repair or Removal Account created pursuant to subdivision (a) of Section 44091 of the Health and Safety Code, for expenditure, upon appropriation by the Legislature, by the Department of Consumer Affairs pursuant to Article 9 (commencing with Section 44090) and Article 10 (commencing with Section 44100) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code.

(B) The department and the Department of Consumer Affairs shall, by interagency agreement, establish a procedure for the Department of Consumer Affairs to reimburse the department for its reasonable costs incurred in collecting the payments received pursuant to paragraph (1).

(3) (A) Upon receipt of a payment pursuant to paragraph (1), the department shall mark the record of the subject vehicle with an exemption from the requirements of subdivision (a) of Section 4000.3. The exemption shall be valid for the second biennial inspection period, and shall have the same force and effect as a certificate of compliance issued in accordance with Section 44015 of the Health and Safety Code. The exemption shall be void if the title to, or any interest in, the vehicle is transferred pursuant to Section 5600.

(B) The department shall collect a fee at the time of the payment pursuant to paragraph (1) for marking the record with an exemption which is equal to the fee that is charged for the issuance of a

certificate of compliance. All fee revenue received pursuant to this subparagraph shall be deposited in the Vehicle Inspection and Repair Fund and be available for purposes of administering and enforcing the vehicle inspection and maintenance program.

(4) Notwithstanding paragraph (1) of subdivision (b), the provisions of Section 4000.6 in existence on December 31, 1995, authorizing an optional additional payment at the time of application for the initial registration for a new motor vehicle shall continue in effect until October 1, 1996.

SEC. 11. Section 8 of this act shall become operative October 1, 1996.

CHAPTER 930

An act to amend Section 43013 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 43013 of the Health and Safety Code is amended to read:

43013. (a) The state board may adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the state board has found to be necessary, cost-effective, and technologically feasible, to carry out the purposes of this division, unless preempted by federal law.

(b) The state board shall, consistent with subdivision (a), adopt standards and regulations for light-duty and heavy-duty motor vehicles; medium-duty motor vehicles, as determined and specified by the state board; and off-road or nonvehicle engine categories, including, but not limited to, off-highway motorcycles, off-highway vehicles, construction equipment, farm equipment, utility engines, locomotives, and, to the extent permitted by federal law, marine vessels.

(c) Prior to adopting standards and regulations for farm equipment, the state board shall hold a public hearing and find and determine that the standards and regulations are necessary, cost-effective, and technologically feasible. The state board shall also consider the technological effects of emission control standards on the cost, fuel consumption, and performance characteristics of mobile farm equipment.

(d) Notwithstanding subdivision (b), the state board shall not adopt any standard or regulation affecting locomotives until the final

study required under Section 5 of Chapter 1326 of the Statutes of 1987 has been completed and submitted to the Governor and Legislature.

(e) Prior to adopting or amending any standard or regulation relating to motor vehicle fuel specifications pursuant to this section, the state board shall, after consultation with public or private entities that would be significantly impacted as described in paragraph (2) of subdivision (f), do both of the following:

(1) Determine the cost-effectiveness of the adoption or amendment of the standard or regulation. The cost-effectiveness shall be compared on an incremental basis with other mobile source control methods and options.

(2) Based on a preponderance of scientific and engineering data in the record, determine the technological feasibility of the adoption or amendment of the standard or regulation. That determination shall include, but is not limited to, the availability, effectiveness, reliability, and safety expected of the proposed technology in an application that is representative of the proposed use.

(f) Prior to adopting or amending any motor vehicle fuel specification pursuant to this section, the state board shall do both of the following:

(1) To the extent feasible, quantitatively document the significant impacts of the proposed standard or specification on affected segments of the state's economy. The economic analysis shall include, but is not limited to, the significant impacts of any change on motor vehicle fuel efficiency, the existing motor vehicle fuel distribution system, the competitive position of the affected segment relative to border states, and the cost to consumers.

(2) Consult with public or private entities that would be significantly impacted to identify those investigative or preventive actions that may be necessary to ensure consumer acceptance, product availability, acceptable performance, and equipment reliability. The significantly impacted parties shall include, but are not limited to, fuel manufacturers, fuel distributors, independent marketers, vehicle manufacturers, and fuel users.

(g) To the extent that there is any conflict between the information required to be prepared by the state board pursuant to subdivision (f) and information required to be prepared by the state board pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the requirements established under subdivision (f) shall prevail.

(h) It is the intent of the Legislature that the state board act as expeditiously as is feasible to reduce nitrogen oxide emissions from diesel vehicles, marine vessels, and other categories of vehicular and mobile sources which significantly contribute to air pollution problems.

CHAPTER 931

An act to add Division 10.2 (commencing with Section 10200) to the Public Resources Code, and to add Sections 421.5 and 422.5 to the Revenue and Taxation Code, relating to agricultural land conservation.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Division 10.2 (commencing with Section 10200) is added to the Public Resources Code, to read:

DIVISION 10.2. AGRICULTURAL LAND STEWARDSHIP PROGRAM OF 1995

CHAPTER 1. GENERAL PROVISIONS

Article 1. Title

10200. This division shall be known, and may be cited, as the Agricultural Land Stewardship Program Act of 1995.

Article 2. Findings and Declarations

10201. The Legislature hereby finds and declares all of the following:

(a) The agricultural lands of the state contribute substantially to the state, national, and world food supply and are a vital part of the state's economy.

(b) The growing population and expanding economy of the state have had a profound impact on the ability of the public and private sectors to conserve land for the production of food and fiber, especially agricultural land around urban areas.

(c) Agricultural lands near urban areas that are maintained in productive agricultural use are a significant part of California's agricultural heritage. These lands contribute to the economic betterment of local areas and the entire state and are an important source of food, fiber, and other agricultural products. Conserving these lands is necessary due to increasing development pressures and the effects of urbanization on farmlands close to cities.

(d) The long-term conservation of agricultural land is necessary to safeguard an adequate supply of agricultural land and to balance the increasing development pressures around urban areas.

(e) A program to encourage and make possible the long-term conservation of agricultural lands is a necessary part of the state's

agricultural land protection policies and programs, and it is appropriate to expend money for that purpose. A program of this nature will only be effective when used in concert with local planning and zoning strategies to conserve agricultural land.

(f) Funding is necessary to better address the needs of conserving agricultural land near urban areas.

10202. It is the intent of the Legislature, in enacting this division, to do all of the following:

(a) Encourage voluntary, long-term private stewardship of agricultural lands by offering landowners financial incentives.

(b) Protect farming and ranching operations in agricultural areas from nonfarm or nonranch land uses that may hinder and curtail farming or ranching operations.

(c) Encourage long-term conservation of productive agricultural lands in order to protect the agricultural economy of rural communities, as well as that of the state, for future generations of Californians.

(d) Encourage local land use planning for orderly and efficient urban growth and conservation of agricultural land.

(e) Encourage local land use planning decisions that are consistent with the state's policies with regard to agricultural land conservation.

(f) Encourage improvements to enhance long-term sustainable agricultural uses.

Article 3. Definitions

10210. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

10211. "Agricultural conservation easement" or "easement" means an interest in land, less than fee simple, which represents the right to prevent the development or improvement of the land, as specified in Section 815.1 of the Civil Code, for any purpose other than agricultural production. The easement shall be granted by the owner of a fee simple to the local government or a nonprofit organization for the Agricultural Land Stewardship Program. It shall be granted in perpetuity as the equivalent of covenants running with the land.

10212. "Applicant" means a city, county, or nonprofit organization that applies for a grant to acquire an agricultural conservation easement.

10213. (a) "Agricultural land" means prime farmland, farmland of statewide importance, unique farmland, farmland of local importance, and commercial grazing land as defined in the Guidelines for the Farmland Mapping and Monitoring Program, pursuant to Section 65570 of the Government Code.

(b) In those areas of the state where lands have not been surveyed for classification pursuant to subdivision (a), land shall meet the

requirements of "prime agricultural land" as set forth in subdivision (c) of Section 51201 of the Government Code.

10214. "Department" means the Department of Conservation.

10215. "Director" means the Director of Conservation.

10216. "Fund" means the Agricultural Land Stewardship Program Fund created pursuant to Section 10230.

10218. "Husbandry practices" means agricultural activities, such as those specified in subdivision (e) of Section 3482 of the Civil Code, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality.

10219. "Local government" means a city or county.

10220. "Local government program" means the policies and implementation measures of a local government to conserve agricultural land.

10221. "Nonprofit organization" means any private nonprofit organization which has among its purposes the conservation of agricultural lands, and holds a tax exemption as defined under Section 501(c)(3) of the Internal Revenue Code, and further qualifies as an organization under Section 170(b)(1)(A)(vi) or 170(h)(3) of the Internal Revenue Code.

10222. "Program" means the Agricultural Land Stewardship Program established under this division.

10223. "Secretary" means the Secretary of the Resources Agency.

Article 4. Administration

10225. The Legislature hereby finds and declares that, pursuant to Chapter 4 (commencing with Section 31150) of Division 21, the State Coastal Conservancy has responsibility for carrying out agricultural projects in the coastal zone, as defined in Section 30103. Nothing in this division shall be construed to alter the conservancy's responsibility for the administration of state or federal funds that are allocated for the purpose of preserving coastal agricultural lands. For projects in the coastal zone, the department shall consult with the State Coastal Conservancy in developing its policies, priorities, and procedures for the allocation of those state and federal moneys.

10226. Nothing in this division shall be construed to overrule, rescind, or amend any of the requirements prescribed in Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code.

10227. No local government shall, in any way, limit development on any land solely because of the land's proximity to property that is protected by an agricultural conservation easement that is subject to this division.

CHAPTER 2. AGRICULTURAL LAND STEWARDSHIP PROGRAM

10230. (a) The Agricultural Land Stewardship Program Fund is hereby created.

(b) Money may be deposited into the fund from gifts, donations, proceeds from the sale of general obligation bonds, funds appropriated therefor by the Legislature, federal grants or loans, or other sources, to be available, upon appropriation, for the implementation of the program. The purposes of the program include the purchase of agricultural conservation easements, land improvement and planning grants, technical assistance provided by the department, technology transfer activities of the department, and administrative costs incurred by the department in administering the program.

(c) Not to exceed 10 percent of all grants made by the department pursuant to this division may be made for land improvement purposes and policy planning purposes. Not less than 90 percent of funds available for grants pursuant to this division shall be expended for the acquisition of interests in land.

10231. (a) Money available from the fund shall be utilized in accordance with the expenditures and distribution authorized, required, or otherwise provided in the program for the acquisition of agricultural conservation easements. This includes all direct costs incidental to the acquisition of agricultural conservation easements, including costs associated with a loss in property tax revenues resulting from the acquisition of those agricultural conservation easements. Direct costs paid to local governments and nonprofit organizations shall not exceed 10 percent of the value of the easements for which the costs were incurred.

(b) The department may retain an amount, in accordance with subdivision (a) of Section 10240, from the fund for the cost of acquisitions for technical assistance, as appropriated by the Legislature, or for administrative purposes.

10232. The director shall not approve a grant if the local government requesting a grant has acquired, or proposes to acquire, the agricultural conservation easement through the use of eminent domain, unless requested by the owner of the land.

10233. Each application for a grant pursuant to this division shall contain a matching component of not less than 5 percent of the value of the grant or a donation of not less than 10 percent of the value of the agricultural conservation easement, or an equivalent combination thereof.

10234. Every application for a grant for the acquisition of agricultural conservation easements shall be accompanied by a resolution from the governing body of the local government in which the proposed easement is located certifying both of the following:

(a) The easement meets the eligibility criteria set forth in Section 10251.

(b) The easement has been approved by the appropriate local governmental governing body.

10235. (a) The director shall not disburse any grant funds until the applicant agrees that any agricultural conservation easement acquired shall be used by the applicant only for the purpose for which the funds were requested and that no other use, sale, or other disposition of the easement shall be permitted unless approved by the secretary or where the easement may be transferred to a public or private agency for management purposes.

(b) If a local government or nonprofit organization holding the easement is dissolved, it shall be transferred to an appropriate public or private agency as provided in this division.

(c) The easement, or any of its terms, may only be amended with the consent of all of the necessary parties to the easement, including the landowner, the applicant, and the secretary. The secretary shall determine that the amendment is not inconsistent with this section before it may be amended.

10236. If the funds are used for the acquisition of an agricultural conservation easement pursuant to a local transfer of development rights program, upon the sale of the easement and its attendant development rights, the local government or nonprofit organization which holds the easement shall reimburse the fund by an amount equal to the fair market value of the easement.

10237. The director shall not disburse any grant funds unless the applicant and seller agree to restrict the use of the land in perpetuity, subject to review after 25 years.

10238. The director shall not disburse any grant funds to acquire agricultural conservation easements which restrict husbandry practices.

10239. The director shall disburse funds to local governments or nonprofit organizations for the acquisition of fee title to agricultural land from owners only if all of the following conditions are met:

(a) The applicant agrees, upon acquisition of the property, to encumber the land with an agricultural conservation easement subject to Section 10262.

(b) The applicant sells the fee title subject to the easement to a private landowner within three years of the acquisition of the fee title.

(c) The applicant reimburses the fund by an amount equal to the fair market value of the land less the value of the easement and associated transaction costs within 30 days after the sale of the restricted fee title.

10240. (a) The department shall not expend any funds from the program to adopt rules, or develop and administer the program, until at least one million dollars ($1,000,000) is deposited in the fund. At that level of funding, state administrative costs shall not exceed 14 percent. When at least seven million dollars ($7,000,000) is deposited in the fund, state administrative costs shall not exceed 2 percent.

(b) The department shall adopt rules and regulations for the implementation of this division, including the standards, criteria, and requirements necessary for approval of local government programs for acquiring agricultural conservation easements, including the eligibility criteria provided in Section 10251. The department may examine alternative agreements for the purpose of evaluating the substantive and fiscal benefits of proposals under this program.

(c) Rules or regulations adopted by the department pursuant to this section shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

10241. The department shall adopt the criteria necessary for its approval of grant applications from local governments and nonprofit organizations for the acquisition of agricultural conservation easements.

10242. The director shall review, and approve or disapprove, grant applications from local governments and nonprofit organizations for the acquisition of agricultural conservation easements on agricultural land or the acquisition of fee title to agricultural land pursuant to Section 10239.

10243. The department shall allocate available state funds to local governments and nonprofit organizations for the acquisition of agricultural conservation easements. However, no governmental agency shall condition the issuance of an entitlement to use on an applicant's granting of a fee interest or less than a fee interest in property pursuant to this chapter.

10244. To be eligible to receive funds pursuant to this division for the acquisition of agricultural conservation easements, a local government shall submit to the department documentation of its adopted general plan that demonstrates a long-term commitment to agriculture and agricultural land conservation, including a summary of goals, objectives, and policies and implementation measures that support that commitment.

10245. The program shall reimburse any school district which requests reimbursement for any net loss of property tax revenues occurring as a result of the program.

10246. Grants may be made for land improvements. Use of these grants shall be limited to the improvement of lands protected by agricultural conservation easements under the program, or of lands protected by other qualified conservation easement programs, if the improvement will directly benefit the lands protected by agricultural conservation easements under the program. If a proposed agricultural conservation easement project includes the use of grant funds for land improvement, that component shall be evaluated with respect to the extent to which it satisfies one or more of the following criteria:

(a) The improvement will enhance the agricultural value of the land protected by the easement, and promote its long-term

sustainable agricultural use such as water supply development and revegetation of eroding streambanks.

(b) The improvement will increase the compatibility of agricultural operations with sensitive natural areas.

(c) The improvement will demonstrate new and innovative best management practices which have the potential for wide application.

(d) The proposed improvement includes the financial and technical involvement of other agencies, such as resource conservation districts, the Wildlife Conservation Board, the United States Consolidated Farm Services Agency, and the United States Natural Resources Conservation Service.

(e) The improvement is part of a coordinated watershed management plan or the equivalent.

CHAPTER 3. ELIGIBILITY AND SELECTION CRITERIA

10250. In reviewing applications pursuant to this division, the department shall determine whether the agricultural conservation easement meets the eligibility and selection criteria set forth in this chapter and conforms with any rules or regulations adopted by the department pursuant to this chapter.

10251. Agricultural conservation easements shall meet all of the following eligibility criteria prior to review pursuant to the selection criteria set forth in Section 10252:

(a) The parcel proposed for conservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production. The land is also in an area that possesses the necessary market, infrastructure, and agricultural support services, and the surrounding parcel sizes and land uses will support long-term commercial agricultural production.

(b) The applicable city or county has a general plan which demonstrates a long-term commitment to agricultural land conservation. This commitment shall be reflected in the goals, objectives, policies, and implementation measures of the plan, as they relate to the area of the county or city where the easement acquisition is proposed.

(c) The grant proposal is consistent with the city or county general plan, and the governing body of the city or county, by resolution, approves the grant proposal.

(d) Without conservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future.

10252. If the department determines that the proposed agricultural conservation easement meets the eligibility criteria set forth in Section 10251, the proposal shall be reviewed based upon the extent to which it satisfies the following selection criteria:

(a) The quality of the agricultural land, based on land capability, farmland mapping and monitoring program definitions, productivity indices, and other soil, climate, and vegetative factors.

(b) The proposal meets multiple natural resource conservation objectives, including, but not limited to, wetland protection, wildlife habitat conservation, and scenic open-space preservation.

(c) The city or county demonstrates a long-term commitment to agricultural land conservation as demonstrated by the following:

(1) The general plan and related land use policies of the city or county.

(2) Policies of the local agency formation commission.

(3) California Environmental Quality Act policies and procedures.

(4) The existence of active local agricultural land conservancies or trusts.

(5) The use of an effective right-to-farm ordinance.

(6) Applied strategies for the economic support and enhancement of agricultural enterprise, including water policies, public education, marketing support, and consumer and recreational incentives.

(7) Other relevant policies and programs.

(d) If the land is in a county that participates in the Williamson Act (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code), the land proposed for protection is within a county or city designated agricultural preserve.

(e) The land proposed for conservation is within two miles outside of the exterior boundary of the sphere of influence of a city as established by the local agency formation commission. Land within a city's sphere of influence may qualify for grants pursuant to this division if the city and county agree the land should be conserved.

(f) The applicant demonstrates fiscal and technical capability to effectively carry out the proposal. Technical capability may be demonstrated by agricultural land conservation expertise on the governing board or staff of the applicant, or through partnership with an organization that has that expertise.

(g) The proposal demonstrates a coordinated approach among affected landowners, local governments, and nonprofit organizations. If other entities are affected, there is written support from those entities for the proposal and a willingness to cooperate. The support of neighboring landowners who are not involved in the proposal shall be considered.

(h) The conservation of the land supports long-term private stewardship and continued agricultural production in the region.

(i) The proposal demonstrates an innovative approach to agricultural land conservation with a potential for wide application in the state.

(j) The amount of matching funds and in-kind services contributed by local governments.

(k) The price of the proposed easement purchase is cost-effective in comparison to the actual easement value.

(*l*) Other relevant considerations established by the director.

10253. Nothing in this chapter shall grant any new authority to the department to affect local policy or land use decisionmaking.

10254. Before an application for an agricultural conservation easement is granted by the department pursuant to the program, the entity that is applying for the easement shall provide public notice to parties reasonably likely to be interested in the property, including the county and city in which the property is located, conservation, agricultural, and development organizations, adjacent property owners, and the general public. Written notice shall be provided to adjacent landowners as indicated in the county tax rolls not less than 30 days before the entity applies for the easement. The notice to the county and city shall be provided not less than 30 days before the entity applies for the easement.

CHAPTER 4. AGRICULTURAL CONSERVATION EASEMENTS

10260. An applicant to the department shall select and retain an independent real estate appraiser to determine the value of the agricultural conservation easement, which shall be calculated by determining the difference between the fair market value and the restricted value of the property.

10261. (a) Whenever any entity exercises the power of eminent domain to acquire land subject to an agricultural conservation easement under this program, the condemnor shall pay just compensation to the owner of the land in fee and to the owner of the easement as follows:

(1) The owner of the land in fee shall be paid the full value which would have been payable to the owner but for the existence of the easement less the value of the easement at the time of condemnation.

(2) The owner of the easement shall be paid the value of the easement at the time of condemnation.

(b) The director may provide, by regulation, or, pursuant to the terms of the easement, that in the case of acquisition of the easement by a federal agency, that the agency shall agree to the amount of compensation paid for the easement that is determined pursuant to subdivision (a), or pay the current fair market value of the land subject to an agricultural easement. The director shall distribute the proceeds of a land sale that is made in accordance with the conditions set forth in subdivision (a).

10262. An agricultural conservation easement shall not prevent any of the following:

(a) The granting of leases, assignments, or other conveyances, or the issuing of permits, licenses, or other authorization, for the exploration, development, storage, or removal of oil and gas by the owner of the subject land, or for the development of related facilities

or for the conduct of incidental activities, as long as the agricultural productivity of the subject land and any multiple uses that made the acquisition a priority for selection under the program, are not thereby significantly impaired.

(b) The granting of rights-of-way by the owner of the subject land in and through the land for the installation, transportation, or use of water, sewage, electric, telephone, gas, oil, or oil products lines, stock water development and storage, energy generation, and fencing, provided that the agricultural productivity of the land and any multiple uses that made the acquisition a priority for selection under the program, are not significantly impaired by those activities.

(c) The construction and use of structures on the subject land that are necessary for agricultural production and marketing, including, but not limited to, barns, shops, packing sheds, cooling facilities, greenhouses, roadside marketing stands, stock water development and storage, energy generation, and fencing, provided that the agricultural productivity of the land and any multiple uses that made the acquisition a priority for selection under the program, are not significantly impaired by those activities.

(d) Construction and use of additional residences for the immediate family members, as defined in subdivision (c) of Section 51230.1 of the Government Code of the landowner, if provided for in the easement.

(e) Construction and use of structures on the subject land for the purpose of providing necessary housing for seasonal or full-time employees of the agricultural operation, if provided for in the easement.

(f) Customary part time or off season rural enterprises or activities, including, but not limited to, hunting and fishing, wildlife habitat improvement, predator control, timber harvesting, and firewood production, provided that the agricultural productivity of the land and any multiple uses that made the acquisition a priority for selection under the program, are not significantly impaired by those activities.

10263. The department shall act on an application for the acquisition of an agricultural conservation easement within 180 days of its receipt, and shall immediately notify the applicant in writing of approval or disapproval of the application in accordance with the criteria set forth in Sections 10251 and 10252.

10264. The director shall disapprove the application for the acquisition of an agricultural conservation easement in either of the following circumstances:

(a) The application does not satisfy the eligibility and selection criteria set forth in Sections 10251 and 10252.

(b) Clear title to the agricultural conservation easement cannot be conveyed.

(c) There is insufficient money in the fund to carry out the acquisition.

(d) Other acquisitions have a higher priority.

10265. If the department disapproves the application for the acquisition of an agricultural conservation easement, the applicant shall be given written notice of the disapproval within 10 days of the decision of the department. The written notice shall state the reason for the disapproval of the application.

CHAPTER 5. TERMINATION OF AGRICULTURAL CONSERVATION EASEMENTS

10270. Twenty-five or more years from the date of sale of the agricultural conservation easement, the landowner may make a request to the department that the easement be reviewed for possible termination.

10271. To terminate the agricultural conservation easement, the local government in which the subject land is located shall undertake an inquiry to determine the feasibility of profitable farming on the subject land. The inquiry shall be concluded and a decision reached by the department within 180 days from the date of the request for termination. The inquiry shall include onsite inspection of the subject land, the holding of a public hearing in the county in which the subject land is located, held after adequate public notice of the hearing has been given and the preparation of a report documenting the findings of the department.

10272. An agricultural conservation easement may be terminated only with the approval of the city council of the city in which the subject land is located, or of the board of supervisors if the land is located in an unincorporated area.

10273. (a) For the department to approve the termination of the agricultural conservation easement, all of the following findings shall be made:

(1) The termination is consistent with the purposes of this division.

(2) The termination is in the public interest.

(3) The termination is not likely to result in the removal of adjacent lands from commercial agricultural production.

(4) The termination is for an alternate use which is consistent with the applicable provisions of the city or county general plan.

(5) The termination will not result in discontiguous patterns of urban development.

(6) There is no land that is available and suitable for the use to which it is proposed that the restricted land be put to, or that development of the restricted land would provide more contiguous patterns of urban development than development of proximate unrestricted land.

(b) As used in subdivision (a), the following terms have the following meaning:

(1) "Proximate unrestricted land" means land that is not restricted by an easement and which is sufficiently close to land that is restricted so that it can serve as a practical alternative for the use which is proposed for the restricted land.

(2) "Suitable for the use" means that the salient features of the proposed use can be served by land not restricted by an easement. The nonrestricted land may be a single parcel or may be a combination of discontiguous parcels.

10274. The uneconomic character of existing agricultural use shall not by itself be sufficient reason for termination of the agricultural conservation easement, unless the secretary determines there is no other reasonable or comparable agricultural use for the land. If the secretary determines that the existing use is uneconomic and that there is no other reasonable or comparable agricultural use of the land, termination of the easement may be approved by the secretary without making a finding pursuant to paragraph (6) of subdivision (a) of Section 10273.

10275. (a) The landowner's request for termination shall be accompanied by a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use.

(b) The landowner requesting a termination shall be required to pay the total amount of the costs incurred by the local government responsible for the administration of proceedings related to the landowner's request for termination, if requested by the local government.

10276. (a) If the termination of the agricultural conservation easement is approved, the landowner shall repurchase the easement by paying to the fund the difference, at that time, between the fair market value and the restricted value. That difference shall be determined by an appraisal approved by the state and conducted at the landowner's expense.

(b) If the landowner fails to repurchase the agricultural conservation easement within 180 days of the appraisal, the landowner shall wait at least one year before reapplying to terminate the easement.

(c) Money received from the repurchase of agricultural conservation easements shall be deposited in the fund and shall be available, upon appropriation, for the purposes set forth in this division.

10277. If the termination of the agricultural conservation easement is not approved, the landowner may reapply for termination not sooner than one year after the submittal of the denied application.

SEC. 2. Section 421.5 is added to the Revenue and Taxation Code, to read:

421.5. For purposes of this article, the following terms have the following meaning:

(a) "Agricultural conservation easement" shall have the same meaning as a conservation easement, as defined in Section 815.1 of the Civil Code.

(b) "Open-space land" includes land subject to an agricultural conservation easement.

SEC. 3. Section 422.5 is added to the Revenue and Taxation Code, to read:

422.5. For the purposes of this article, open-space land is "enforceably restricted" within the meaning of Section 8 of Article XIII of the California Constitution if it is subject to an agricultural conservation easement.

CHAPTER 932

An act to amend Sections 10290.1 and 12101.5 of, and to add Section 10300 to, the Public Contract Code, relating to state contracts.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Ensuring value-effective solutions for the state's procurement needs requires the appearance and reality that acquisitions for materials, supplies and equipment, services and consulting services, and electronic data processing and telecommunications goods and services, are conducted fairly and impartially.

(b) The integrity of the procurement process, as well as the ability to attract maximum competition, are further enhanced by allowing an aggrieved bidder the right to a timely and equitable process to protest a solicitation, award, or related decision.

(c) In February 1994, the Governor, in Executive Order W-73-94, identified the need for, and directed the Department of General Services, Procurement Division to undertake, a comprehensive procurement reform initiative, now referred to as "Procurement 2000."

SEC. 2. Section 10290.1 of the Public Contract Code is amended to read:

10290.1. (a) Notwithstanding any other provision of law, in exercising their delegation of procurement authority from the Department of General Services, state agencies may place purchase orders with vendors who have multiple award schedules with the General Services Administration of the United States if the vendor is willing to extend those terms, conditions, and prices. The

department may also develop multiple award agreements for use by state agencies in the same manner.

(b) The Department of General Services shall determine the delegation procurement authority, to be set forth in the State Administrative Manual, for agencies wishing to place purchase orders with vendors who have multiple award schedules. The department shall seek input from both customer departments and agencies and private sector vendors.

SEC. 3. Section 10300 is added to the Public Contract Code, to read:

10300. (a) A Customer and Vendor Advocate shall be established in the Department of General Services as a resource to state agencies and departments, and vendors seeking information regarding the state process, procedures, and regulations for bidding on state contracts, and as a resource to bidders seeking to file a protest on award in accordance with this chapter. The advocate shall, at a minimum, provide the following services to the protesting bidder:

(1) Assistance to customer departments and agencies regarding procurement rules and regulations, and acquisition resource options.

(2) Assistance to the bidder in assessing the validity of the bidder's proposed grounds of filing the protest in accordance with the terms of the solicitation on the contract, as well as statutory or regulatory guidelines governing the procurement in question.

(3) Provision of information to the protesting bidder regarding avenues and options available to the bidder to proceed with a formal protest on the award.

(b) The advocate shall make services, as specified in this section, available on a timely basis to the protesting bidder.

(c) Notification to bidders regarding the availability of services by the advocate shall be included in the solicitation document. This notification shall also outline procedures and timelines for bidders who may wish to engage the services of the advocate.

SEC. 4. Section 12101.5 of the Public Contract Code is amended to read:

12101.5. (a) It is the intent of the Legislature that agencies of the State of California utilize an acquisition method that is compatible with their short- and long-term fiscal needs in contracts relating to commodities and electronic data processing and telecommunications goods and services. State agencies should be able to specify their anticipated life cycle requirements that would become one of the criteria for procurement selection. These agencies should be given the choice of vendors to meet statewide standardization needs, unique service requirements, application requirements, and long-term satisfaction criteria. There is a need for the State of California to enter into long-term contracts with annual cancellation and fund out clauses, as required, to protect the state's interests as well as provide the option for multiyear renewals to

encourage vendors to develop higher levels of service and support throughout the contracts.

(b) The state may utilize multiple awards including federal General Service Administration Multiple Awards Schedules in procurements for commodities and electronic data processing and telecommunications goods; master services agreements for electronic data processing personal services; master agreements for equipment; and master equipment services agreements. For purposes of this subdivision, a multiple award is an award of an indefinite quantity contract for one or more similar goods to more than one vendor. Except for possible multiple awards as permitted by this subdivision, all the requirements of this chapter pertaining to other types of electronic data processing and telecommunications procurements shall be followed. The Department of General Services shall ensure that multiple award schedules are in compliance with all other applicable statutes.

(c) Notwithstanding any other provision of law, state agencies, in exercising their delegation of procurement authority from the Department of General Services, may make awards to vendors who have multiple award schedules with the General Services Administration of the United States on the same terms, conditions, and prices if the vendor is willing to do so. The department may also develop multiple award agreements for use by state agencies in the same manner. The Department of General Services shall determine the delegation procurement authority for agencies wishing to use multiple award schedules pursuant to the State Administrative Manual.

CHAPTER 933

An act to add Sections 480.7 and 487 to, and to add and repeal Section 441.1 of, the Revenue and Taxation Code, relating to real property.

[Approved by Governor October 14, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 441.1 is added to the Revenue and Taxation Code, to read:

441.1. (a) Prior to July 1, 1996, each domestic life insurance company that owns real property in the county in a separate account established pursuant to Section 10506 of the Insurance Code, and each foreign life insurance company that owns real property in the county in a separate account established pursuant to the

corresponding insurance laws of its state of domicile, shall file a property statement with the assessor that does all of the following:

(1) Identifies all real property in the county that is held on January 1, 1996, by the insurance company in separate accounts and all of the separate accounts in which the real property is held.

(2) Describes the parties to, the date of, and the amount paid with respect to, any transfer of a property interest to or from a separate account. In complying with the preceding sentence, the person shall indicate the name, address, and contact person of the relevant separate account, and shall supply any other information, as may be requested by the assessor, that is relevant to the assessment function and is information of a type described in subdivision (b) of Section 480.7. The property statement shall include a description, as required by this paragraph, of any transfer of a real property interest that occurred on or after January 1, 1985, and before January 1, 1996.

(b) (1) A property statement filed pursuant to subdivision (a) shall be declared to be true under penalty of perjury and shall be signed by either an officer of the filing life insurance company, or by an employee or agent of that insurance company who has been designated in writing by the company's board of directors to sign the statement on the company's behalf.

(2) A property statement filed pursuant to subdivision (a) shall be filed with the assessor either in person or through the United States mail, properly addressed with the postage prepaid.

(3) Any life insurance company required by subdivision (a) to file a property statement that fails to file that statement by July 1, 1996, shall be subject to a penalty of one thousand dollars ($1,000) in addition to any other penalty prescribed by law.

(c) This section shall become inoperative on July, 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 480.7 is added to the Revenue and Taxation Code, to read:

480.7. (a) On or after January 1, 1996, in addition to any filing required to be made pursuant to Section 441, 480, 480.1, or 480.2, any domestic life insurance company that has established a separate account pursuant to Section 10506 of the Insurance Code, or any foreign life insurance company that has established a separate account pursuant to the corresponding insurance laws of its state of domicile, shall file with the assessor a signed statement of transfer as described in subdivision (b) with respect to any transfer of real property, located within the county, to or from that separate account.

(b) The statement of transfer required to be filed by subdivision (a) shall comply with all of the following conditions:

(1) The statement of transfer shall be subscribed under penalty of perjury.

(2) The statement of transfer shall identify all of the following:

(A) The separate account to which or from which the real property was transferred.

(B) The parties to the transfer.

(C) The date of transfer and the amount, if any, of consideration given with respect to the transfer, whether paid in the form of money or otherwise.

(D) The name and address of a contact person for any questions with respect to the separate account.

(E) Any other information with respect to the transfer as prescribed by the State Board of Equalization, after consultation with the California Assessor's Association.

(3) The statement of transfer shall not be required to include any information that is not relevant to the assessment function.

(4) The statement of transfer shall be signed by either an officer of the filing life insurance company, or by an employee or agent of that insurance company who has been designated in writing by the company's board of directors to sign the statement of transfer on the company's behalf.

(5) The statement of transfer shall be filed with the assessor either in person or through the United States mail, properly addressed with the postage prepaid.

(c) Any life insurance company required by subdivision (a) to file a statement of transfer that fails to file that statement within 45 days from the date of the subject transfer of real property shall be subject to a penalty of one thousand dollars ($1,000), in addition to any other penalty prescribed by law.

SEC. 3. Section 487 is added to the Revenue and Taxation Code, to read:

487. Any life insurance company that completes a real property transaction for which approval was obtained from the Insurance Commissioner pursuant to Section 10506 of the Insurance Code shall, upon completing that transaction, file with the assessor of the county in which the real property is located a certified copy of the application that the insurance company filed with the Insurance Commissioner with respect to the transaction.

SEC. 4. No reimbursement is required by certain portions of this act pursuant to Section 6 of Article XIII B of the California Constitution because those portions of this act provide for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts; or because the only costs that may be incurred pursuant to those portions of this act by a local agency or school district will be incurred because 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, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that other portions of this act contain 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 934

An act to amend Section 3003 of the Penal Code, relating to parole.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county from which he or she was committed.

For purposes of this subdivision, "county from which he or she was committed" means the county where the crime for which the inmate was convicted occurred and shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county in a case where that would be in the best interests of the public and of the parolee. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the authority may consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The last legal residence of the inmate having been in another county.

(5) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(6) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) (1) The Department of Corrections shall establish a pilot project in San Bernardino County in which the following information, if available, shall be released to the local law enforcement agencies regarding a paroled inmate who is released in San Bernardino County:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date the address provided pursuant to this subparagraph was last verified.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(2) The information required by this subdivision shall come from the parolee activity report and sex registrants file. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this

information shall be done by modem or tape transfer at least once each month.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(5) The San Bernardino County Sheriff's Department shall provide a project evaluation to the Department of Corrections at least once per month. The information shall be provided in a form available for transfer by modem or tape.

(6) The Department of Corrections shall prepare and submit to the Legislature on or before June 30, 1996, a report on the pilot project that includes a recommendation on whether the pilot project should be expanded and an evaluation of the resources necessary to expand the project statewide. In preparing the report, the department shall consult with the San Bernardino County Sheriff's Department, the Los Angeles City Police Department, and the Long Beach City Police Department in order to receive their input regarding the feasibility of expanding the project statewide.

(7) The Office of Criminal Justice Planning shall investigate the availability of funding necessary to implement the project statewide, with particular emphasis on any federal funding that may be available.

(e) Notwithstanding any other law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.7 or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(f) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(g) An inmate may be paroled to another state pursuant to any other law.

SEC. 1.5. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county from which he or she was committed.

For purposes of this subdivision, "county from which he or she was committed" means the county where the crime for which the inmate was convicted occurred and shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public and of the parolee. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the paroling authority may consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The last legal residence of the inmate was in another county.

(5) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(6) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The Department of Corrections shall establish a pilot project in San Bernardino County in which the following information, if available, shall be released to the local law enforcement agencies regarding a paroled inmate who is released in San Bernardino County:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date the address as provided pursuant to this subparagraph was last verified.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(2) The information required by this subdivision shall come from the parolee activity report and sex registrants file. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be done by modem or tape transfer at least once each month.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(5) The San Bernardino County Sheriff's Department shall provide a project evaluation to the Department of Corrections at least once per month. The information shall be provided in a form available for transfer by modem or tape.

(6) The Department of Corrections shall prepare and submit to the Legislature on or before June 30, 1996, a report on the pilot project that includes a recommendation on whether the pilot project should be expanded and an evaluation of the resources necessary to expand the project statewide. In preparing the report, the department shall consult with the San Bernardino County Sheriff's Department, the Los Angeles City Police Department, and the Long Beach City Police Department in order to receive their input regarding the feasibility of expanding the project statewide.

(7) The Office of Criminal Justice Planning shall investigate the availability of funding necessary to implement the project statewide, with particular emphasis on any federal funding that may be available.

(f) Notwithstanding any other law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.7 or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on

parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(h) An inmate may be paroled to another state pursuant to any other law.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 3003 of the Penal Code proposed by both this bill and SB 103. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 3003 of the Penal Code, and (3) this bill is enacted after SB 103, in which case Section 1 of this bill shall not become operative.

CHAPTER 935

An act to amend Section 13964 of the Government Code, to amend Sections 288.1, 1000.12, and 1203.066 of the Penal Code, and to amend Section 656 of the Welfare and Institutions Code, relating to children.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 13964 of the Government Code is amended to read:

13964. (a) After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim or derivative victim incurred an injury which resulted in a pecuniary loss.

(b) An application for assistance may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application.

(c) No victim shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(d) No derivative victim shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim or derivative victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim or derivative victim failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(e) No application shall be denied solely because no criminal complaint has been filed, unless the complaint has not been filed for one of the reasons stated in subdivision (c) or (d). Moreover, no application shall be denied because a criminal complaint is filed, but later dismissed, if the dismissal is not for the reasons stated in subdivision (c) or (d).

(f) Once an application has been accepted by the board pursuant to subdivision (b) of Section 13962, as the application pertains to medical or medical-related expenses, the claim shall continue to be processed and either awarded or denied pursuant to this article in the event of the death of the applicant.

(g) If a nonoffending parent in a child sexual abuse case cooperates with the prosecution or Child Protective Services by providing assistance to law enforcement in the disposition of the case, that parent shall not be considered uncooperative within the meaning of this section and shall be eligible, if otherwise qualified, for restitution as a derivative victim pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 13965.

SEC. 2. Section 288.1 of the Penal Code is amended to read:

288.1. Any person convicted of committing any lewd or lascivious act including any of the acts constituting other crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years shall not have his or her sentence suspended until the court obtains a report from a reputable psychiatrist, from a reputable psychologist who meets the standards set forth in Section 1027, or from a recognized treatment program pursuant to Section 1000.12 or 1203.066, as to the mental condition of that person.

SEC. 3. Section 1000.12 of the Penal Code is amended to read:

1000.12. (a) It is the intent of the Legislature that nothing in this chapter deprive a prosecuting attorney of the ability to prosecute any person who is suspected of committing any crime in which a minor is a victim of an act of molestation, abuse, or neglect to the fullest extent of the law, if the prosecuting attorney so chooses.

(b) Except as provided in subdivision (c), in lieu of prosecuting a person suspected of committing any crime, involving a minor victim, of an act of abuse or neglect, the prosecuting attorney may refer that person to the county department in charge of public social services or the probation department for counseling or psychological treatment and such other services as the department deems necessary. The prosecuting attorney shall seek the advice of the

county department in charge of public social services or the probation department in determining whether or not to make the referral.

(c) (1) In lieu of trial, the prosecuting attorney may make a motion to the trial court to defer entry of judgment with respect to any crime charged in which a minor is a victim of an act of molestation or sexual abuse, provided that the defendant pleads guilty to all crimes and enhancements charged. Upon that motion and defendant's plea of guilty to all charges and enhancements, the court may defer entry of judgment, contingent upon the defendant's referral to, and completion of, a treatment program approved by the prosecuting attorney. Upon the defendant's successful completion of the treatment program, and upon the positive recommendation of the treatment program authority and the motion of the prosecuting attorney, but no sooner than five years from the date of the defendant's referral to the treatment program, the court shall dismiss the charge or charges against the defendant.

(2) Upon any failure of treatment under the program described in paragraph (1), the prosecuting attorney may make a motion to the court for entry of judgment and the court shall, upon a finding of failure of treatment based on a preponderance of evidence, enter judgment upon the defendant's pleas and admissions, and schedule a sentencing hearing as otherwise provided in this code.

(3) The office of the prosecuting attorney shall promulgate eligibility standards for deferred entry of judgment and treatment of defendants described in paragraph (1), which shall include, but not be limited to, all of the following:

(A) Deferred entry of judgment for the defendant is in the best interests of the minor victim.

(B) Rehabilitation of the defendant is feasible in a recognized treatment program, as defined in Section 1203.066, designed to deal with child molestation, abuse, or neglect, as specifically related to the charges made.

(C) There is no threat of harm to the minor victim if entry of judgment is deferred.

(D) No person shall be deemed eligible for deferred entry of judgment under this section unless he or she pleads guilty to all charges and enhancements.

(E) Deferred entry of judgment shall not apply to any person who is charged under subdivision (b) of Section 288, or any sexual offense involving force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the minor victim or another person.

(F) Any person who applies for deferred entry of judgment under this section shall also meet all of the requirements for the counseling program delineated under Section 1000.13.

(4) Deferred entry of judgment shall be granted upon the following terms:

(A) Defendant shall seek and participate in a rehabilitation program as prescribed by the district attorney.

(B) Defendant shall not use, handle, or have in his or her possession marijuana, narcotics, dangerous drugs, or controlled substances of any kind, unless lawfully prescribed for the defendant by a licensed physician.

(C) Defendant shall not associate with known or reputed users or sellers of marijuana, dangerous drugs, or narcotics, or be in places where narcotics or dangerous drugs are present.

(D) Defendant shall submit his or her person, property, automobile, and any object under his or her control to search and seizure in or out of the presence of the defendant, by any law enforcement officer or probation officer.

(E) Unification with the family or unsupervised contact with the minor victim or any other minor shall be prohibited except upon recommendation of the treatment program and motion of the district attorney and order of the court.

(F) Any violation of the law constitutes a failure of treatment.

SEC. 4. Section 1203.066 of the Penal Code is amended to read:

1203.066. (a) Notwithstanding Section 1203 or any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) A person who is convicted of violating Section 288 or 288.5 when the act is committed by the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288 or 288.5.

(3) A person who is convicted of a violation of Section 288 or 288.5 and who was a stranger to the child victim or befriended the child victim for the purpose of committing an act in violation of Section 288 or 288.5, unless the defendant honestly and reasonably believed the victim was 14 years of age or older.

(4) A person who used a weapon during the commission of a violation of Section 288 or 288.5.

(5) A person who is convicted of committing a violation of Section 288 or 288.5 and who has been previously convicted of a violation of Section 261, 262, 264.1, 266, 266c, 267, 285, 286, 288, 288.5, 288a, or 289, or of assaulting another person with intent to commit a crime specified in this paragraph in violation of Section 220, or who has been previously convicted in another state of an offense which, if committed or attempted in this state, would constitute an offense enumerated in this paragraph.

(6) A person who violated Section 288 or 288.5 while kidnapping the child victim in violation of Section 207, 208, or 209.

(7) A person who is convicted of committing a violation of Section 288 or 288.5 against more than one victim.

(8) A person who, in violating Section 288 or 288.5, has substantial sexual conduct with a victim who is under 14 years of age.

(9) A person who, in violating Section 288 or 288.5, used obscene matter, as defined in Section 311, or matter, as defined in Section 311, depicting sexual conduct, as defined in Section 311.3.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) Paragraphs (7), (8), and (9) of subdivision (a) shall not apply when the court makes all of the following findings:

(1) The defendant is the victim's natural parent, adoptive parent, stepparent, relative, or is a member of the victim's household who has lived in the victim's household.

(2) A grant of probation to the defendant is in the best interest of the child.

(3) Rehabilitation of the defendant is feasible, the defendant is amenable to undergoing treatment, and the defendant is placed in a recognized treatment program designed to deal with child molestation immediately after the grant of probation or the suspension of execution or imposition of sentence.

(4) The defendant is removed from the household of the victim until the court determines that the best interests of the victim would be served by returning the defendant to the household of the victim. While removed from the household, the court shall prohibit contact by the defendant with the victim, except the court may permit the supervised contact, upon the request of the director of the court ordered supervised treatment program, and with the agreement of the victim and the victim's parent or legal guardian, other than the defendant. As used in this paragraph, "contact with the victim" includes all physical contact, being in the presence of the victim, communication by any means, any communication by a third party acting on behalf of the defendant, and any gifts.

(5) There is no threat of physical harm to the child victim if probation is granted. The court upon making its findings pursuant to this subdivision is not precluded from sentencing the defendant to jail or prison, but retains the discretion not to do so. The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

The court shall order the psychiatrist or psychologist who is appointed pursuant to Section 288.1 to include a consideration of the factors specified in paragraphs (2), (3), and (4) in making his or her report to the court.

(d) The existence of any fact that would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or

found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) As used in this section and in Section 1000.12, the following terms apply:

(1) "Recognized treatment program" means a program with substantial expertise in the treatment of children who are victims of sexual abuse, their families, and offenders, that demonstrates to the court all of the following:

(A) An integrated program of treatment and assistance to victims and their families.

(B) A treatment regimen designed to specifically address the offense.

(C) The ability to serve indigent clients.

(2) "Integrated program of treatment and assistance to victims and their families" means that the program provides all of the following:

(A) A full range of services necessary to the recovery of the victim and any nonoffending members of the victim's family, including individual, group, and family counseling as necessary.

(B) Interaction with the courts, social services, probation, the district attorney, and other government agencies to ensure appropriate help to the victim's family.

(C) Appropriate supervision and treatment, as required by law, for the offender.

(f) For purposes of this section and Section 1000.12, a program that provides treatment only to offenders and does not provide an integrated program of treatment and assistance to victims and their families is not a recognized treatment program.

SEC. 5. Section 1203.066 of the Penal Code is amended to read:

1203.066. (a) Notwithstanding Section 1203 or any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) A person who is convicted of violating Section 288 or 288.5 when the act is committed by the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288 or 288.5.

(3) A person who is convicted of a violation of Section 288 or 288.5 and who was a stranger to the child victim or befriended the child victim for the purpose of committing an act in violation of Section 288 or 288.5, unless the defendant honestly and reasonably believed the victim was 14 years of age or older.

(4) A person who used a weapon during the commission of a violation of Section 288 or 288.5.

(5) A person who is convicted of committing a violation of Section 288 or 288.5 and who has been previously convicted of a violation of Section 261, 262, 264.1, 266, 266c, 267, 285, 286, 288, 288.5, 288a, or 289, or of assaulting another person with intent to commit a crime specified in this paragraph in violation of Section 220, or who has been previously convicted in another state of an offense which, if committed or attempted in this state, would constitute an offense enumerated in this paragraph.

(6) A person who violated Section 288 or 288.5 while kidnapping the child victim in violation of Section 207, 209, or 209.5.

(7) A person who is convicted of committing a violation of Section 288 or 288.5 against more than one victim.

(8) A person who, in violating Section 288 or 288.5, has substantial sexual conduct with a victim who is under 14 years of age.

(9) A person who, in violating Section 288 or 288.5, used obscene matter, as defined in Section 311, or matter, as defined in Section 311, depicting sexual conduct, as defined in Section 311.3.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) Paragraphs (7), (8), and (9) of subdivision (a) shall not apply when the court makes all of the following findings:

(1) The defendant is the victim's natural parent, adoptive parent, stepparent, relative, or is a member of the victim's household who has lived in the victim's household.

(2) A grant of probation to the defendant is in the best interest of the child.

(3) Rehabilitation of the defendant is feasible, the defendant is amenable to undergoing treatment, and the defendant is placed in a recognized treatment program designed to deal with child molestation immediately after the grant of probation or the suspension of execution or imposition of sentence.

(4) The defendant is removed from the household of the victim until the court determines that the best interests of the victim would be served by returning the defendant to the household of the victim. While removed from the household, the court shall prohibit contact by the defendant with the victim, except the court may permit supervised contact, upon the request of the director of the court-ordered supervised treatment program, and with the agreement of the victim and the victim's parent or legal guardian, other than the defendant. As used in this paragraph, "contact with the victim" includes all physical contact, being in the presence of the victim, communication by any means, any communication by a third party acting on behalf of the defendant, and any gifts.

(5) There is no threat of physical harm to the child victim if probation is granted. The court upon making its findings pursuant to this subdivision is not precluded from sentencing the defendant to jail

or prison, but retains the discretion not to do so. The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

The court shall order the psychiatrist or psychologist who is appointed pursuant to Section 288.1 to include a consideration of the factors specified in paragraphs (2), (3), and (4) in making his or her report to the court.

(d) The existence of any fact that would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) As used in this section and in Section 1000.12, the following terms apply:

(1) "Recognized treatment program" means a program with substantial expertise in the treatment of children who are victims of sexual abuse, their families, and offenders, that demonstrates to the court all of the following:

(A) An integrated program of treatment and assistance to victims and their families.

(B) A treatment regimen designed to specifically address the offense.

(C) The ability to serve indigent clients.

(2) "Integrated program of treatment and assistance to victims and their families" means that the program provides all of the following:

(A) A full range of services necessary to the recovery of the victim and any nonoffending members of the victim's family, including individual, group, and family counseling as necessary.

(B) Interaction with the courts, social services, probation, the district attorney, and other government agencies to ensure appropriate help to the victim's family.

(C) Appropriate supervision and treatment, as required by law, for the offender.

(f) For purposes of this section and Section 1000.12, a program that provides treatment only to offenders and does not provide an integrated program of treatment and assistance to victims and their families is not a recognized treatment program.

SEC. 6. Section 656 of the Welfare and Institutions Code, as amended by Chapter 313 of the Statutes of 1995, is amended to read:

656. A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and subdivision under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to petitioner, of both of the parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there are none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, that: (1) Section 903 may make that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

(i) In a proceeding alleging that the minor comes within Section 601, notice to the parent, guardian, or other person having control or charge of the minor that failure to comply with the compulsory school attendance laws is an infraction, which may be charged and prosecuted before the juvenile court judge sitting as a municipal court judge. In those cases, the petition shall also include notice that the parent, guardian, or other person having control or charge of the minor has the right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure.

(j) If a proceeding is pending against a minor child for a violation of Section 594.2, 640.5, 640.6, or 640.7 of the Penal Code, a notice to the parent or legal guardian of the minor that if the minor is found to have violated either or both of these provisions that (1) any community service which may be required of the minor may be

performed in the presence, and under the direct supervision, of the parent or legal guardian pursuant to either or both of these provisions; and (2) if the minor is personally unable to pay any fine levied for the violation of either or both of these provisions, that the parent or legal guardian of the minor shall be liable for payment of the fine pursuant to those sections.

(k) A notice to the parent or guardian of the minor that if the minor is ordered to make restitution to the victim pursuant to Section 730.6, or to pay fines or penalty assessments, the parent or guardian may be liable for the payment of restitution, fines, or penalty assessments.

SEC. 7. Section 5 of this bill incorporates amendments to Section 1203.066 of the Penal Code proposed by both this bill and AB 95. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 1203.066 of the Penal Code, and (3) this bill is enacted after AB 95, in which case Section 4 of this bill shall not become operative.

CHAPTER 936

An act to add Section 3058.7 to the Penal Code, relating to criminal justice.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 3058.7 is added to the Penal Code, to read:

3058.7. (a) Whenever any sheriff or chief of police is notified of the pending release of a convicted violent felon pursuant to Section 3058.6, that sheriff or chief of police may notify any person designated by the sheriff or chief of police as an appropriate recipient of this notice.

(b) A law enforcement official authorized to provide notice pursuant to this section, and the public agency or entity employing the law enforcement official, shall not be liable for providing or failing to provide notice pursuant to this section.

CHAPTER 937

An act to amend Section 48918 of the Education Code, relating to pupils.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 48918 of the Education Code is amended to read:

48918. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

(a) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall specify that the pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the governing board.

The decision of the governing board as to whether to expel a pupil shall be made within 10 schooldays after the conclusion of the hearing, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district governing board does not meet on a weekly basis, the governing board shall make its decision about a pupil's expulsion within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent, unless the pupil requests in writing that the decision be postponed.

In the event that compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include: the date and place of the hearing; a statement of the specific facts and charges upon which the proposed expulsion is based; a copy of the disciplinary rules of the district that relate to the alleged violation; a notice of the parent, guardian, or pupil's

obligation pursuant to subdivision (b) of Section 48915.1; and notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or employ and be represented by counsel, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses.

(c) Notwithstanding Section 54593 of the Government Code and Section 35145, the governing board shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days prior to the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.

If the governing board or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations.

(d) In lieu of conducting an expulsion hearing itself, the governing board may contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207, for a hearing officer to conduct the hearing. The governing board may also appoint an impartial administrative panel of three or more certificated persons, none of whom are members of the board or employed on the staff of the school in which the pupil is enrolled. The hearing shall be conducted in accordance with all of the procedures established under this section.

(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent of schools or the superintendent's designee after consultation with school district personnel, including the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

(f) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact

and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board may order.

The decision of the governing board to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of the identity of a witness and the testimony of that witness at the hearing would subject the witness to an unreasonable risk of harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) Technical rules of evidence shall not apply to the hearing, except that relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

(i) (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with Section 11525 of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any

decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

(j) Whether an expulsion hearing is conducted by the governing board or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian and shall be accompanied by notice of the right to appeal the expulsion to the county board of education and of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that district of the expulsion, upon enrollment in a new school district.

(k) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions shall be a nonprivileged, disclosable public record.

The expulsion order and the causes therefor shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 938

An act to amend Sections 124, 4160, 10175.2, and 23083 of the Business and Professions Code, to amend Sections 232 and 94323 of, and to add Section 92001 to, the Education Code, to amend Section 755.5 of the Evidence Code, to amend Sections 3373 and 8054 of the Financial Code, to amend Sections 202 and 355 of the Fish and Game Code, to amend Sections 3541.3, 3563, 8541, 11018, 11125.7, 11340.5, 11342, 11346.2, 11349.5, 11349.9, 11350, 11370, 11370.3, 11370.5, 11371, 11500, 11502, 11505, 11506, 11507.6, 11507.7, 11508, 11509, 11511, 11511.5, 11512, 11513, 11517, 11518, 11519, 11520, 11523, 11524, 11526, 11529, 12935, 19582.5, 21758, and 37624.2 of, to amend the heading of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of, to amend, repeal, and add Sections 11501 and 68560.5 of, to add Sections 11340.4, 11507.3, 11511.7, 11518.5, 15609.5, and 17533 to, to add article headings immediately preceding Sections 11370 and 11371 of, to add Article 3 (commencing with Section 11380) to Chapter 4 of, and to add Chapter 4.5 (commencing with Section 11400) to, Part 1 of Division 3 of Title 2 of, and to repeal Sections 11346.14, 11346.6, 11501.5, 11502.1, 11510, 11513.5, 11525, and 11530 of, the Government Code, to amend Sections 443.37, 1551.5, 1568.065, 1569.515, 1596.8875, 11830, 11830.5, 11834.37, 11994, 18930, 18949.6, 25149, 25229, 25299.59, 25375.5, 32154, 39657, 40843, 50199.17, and 57005 of the Health and Safety Code, to amend Sections 146, 4600, 5278, 5710, 5811, 6380.5, and 6603 of, and to add Section 1144.5 to, the Labor Code, to add Section 105 to the Military and Veterans Code, to add Section 3066 to the Penal Code, to amend Sections 663.1, 4204, and 40412 of, and to add Sections 25513.3 and 30329 to, the Public Resources Code, to amend Section 1701 of the Public Utilities Code, to amend Sections 1636, 19044, and 19084 of the Revenue and Taxation Code, to amend Section 409 of the Unemployment Insurance Code, to amend Sections 3066, 11728, and 14112 of the Vehicle Code, and to amend Sections 4689.5 and 14105.41 of, to amend and repeal Section 11350.6 of, and to add Sections 1778 and 3158 to, the Welfare and Institutions Code, relating to administrative procedure.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 124 of the Business and Professions Code is amended to read:

124. Notwithstanding subdivision (c) of Section 11505 of the Government Code, whenever written notice, including a notice, order, or document served pursuant to Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), or Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code, is required to be given by any board in the department, the notice may be given by regular mail addressed to the last known address of the licentiate or by personal service, at the option of the board.

SEC. 2. Section 4160 of the Business and Professions Code is amended to read:

4160. (a) The California Hazardous Substances Act, Chapter 13 (commencing with Section 28740) of Division 21 of the Health and Safety Code, applies to pharmacies and pharmacists and any other person or place subject to the jurisdiction of the board.

(b) The board may enforce that act when necessary for the protection of the health and safety of the public if prior regulatory notice is given in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Board enforcement shall focus on those hazardous substances which relate significantly to or overlap the practice of pharmacy.

(c) "Poison," as used elsewhere in this chapter, shall reference a category of hazardous substances defined in Section 28743 of the Health and Safety Code which the board may by regulation make more specific.

SEC. 3. Section 10175.2 of the Business and Professions Code is amended to read:

10175.2. (a) If the Real Estate Commissioner determines that the public interest and public welfare will be adequately served by permitting a real estate licensee to pay a monetary penalty to the department in lieu of an actual license suspension, the commissioner may, on the petition of the licensee, stay the execution of all or some part of the suspension on the condition that the licensee pay a monetary penalty and the further condition that the licensee incur no other cause for disciplinary action within a period of time specified by the commissioner.

(b) The commissioner may exercise the discretion granted under subdivision (a) either with respect to a suspension ordered by a decision after a contested hearing on an accusation against the licensee or by stipulation with the licensee after the filing of an accusation, but prior to the rendering of a decision based upon the accusation. In either case, the terms and conditions of the disciplinary action against the licensee shall be made part of a formal decision of the commissioner.

(c) If a licensee fails to pay the monetary penalty in accordance with the terms and conditions of the decision of the commissioner, the commissioner may, without a hearing, order the immediate

execution of all or any part of the stayed suspension in which event the licensee shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the department under the terms of the decision.

(d) The amount of the monetary penalty payable under this section shall not exceed two hundred fifty dollars ($250) for each day of suspension stayed nor a total of ten thousand dollars ($10,000) per decision regardless of the number of days of suspension stayed under the decision.

(e) Any monetary penalty received by the department pursuant to this section shall be credited to the Recovery Account of the Real Estate Fund.

SEC. 4. Section 23083 of the Business and Professions Code is amended to read:

23083. (a) The board shall determine the appeal upon the record of the department and upon any briefs which may be filed by the parties. If any party to the appeal requests the right to appear before the board, the board shall fix a time and place for argument. The board shall not receive any evidence other than that contained in the record of the proceedings of the department.

(b) Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the determination.

SEC. 5. Section 232 of the Education Code is amended to read:

232. The State Board of Education, the Board of Governors of the California Community Colleges, and the Trustees of the California State University shall issue regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, commonly referred to as the rulemaking provisions of the Administrative Procedure Act, to implement this chapter.

The Regents of the University of California may issue regulations to implement this chapter. If the Regents of the University of California choose to issue regulations it may issue them pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, commonly referred to as the rulemaking provisions of the Administrative Procedure Act.

SEC. 6. Section 92001 is added to the Education Code, to read:

92001. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing conducted by the University of California.

SEC. 7. Section 94323 of the Education Code is amended to read:

94323. (a) This section establishes the procedure for notice and hearing required under this chapter and, except as provided in Sections 94319.12 and 94322, may be used in lieu of other notice or hearing requirements provided in this chapter.

(b) If notice of administrative action is required by this chapter, the council shall serve notice stating the following:

(1) The action, including the penalties and administrative sanctions sought.

(2) The grounds for the action with sufficient particularity to give notice of the transactions, occurrences, violations, or other matters on which the action is based.

(3) The right to a hearing and the time period within which the party subject to the notice may request a hearing in writing. The time period shall not be less than 15 days after service of the notice unless a longer period is provided by statute.

(4) The right to be present at the hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

(5) The administrative action set forth in the notice will be taken and shall become final if the party subject to the notice does not request a hearing in writing within the time period expressed in the notice.

(c) If a party subject to a notice provided pursuant to subdivision (b) requests a hearing in writing within 10 days of receiving the notice, the council shall schedule a hearing. The hearing shall be held in a location determined pursuant to Section 11508 of the Government Code. The council shall serve reasonable notice of the time and place for the hearing at least 10 days before the hearing. The council may continue the date of the hearing upon a showing of good cause.

(d) (1) Any party, including the council, may submit a written request to any other party before the hearing to obtain the names and addresses of any person who has personal knowledge, or who the party receiving the request claims to have personal knowledge, of any of the transactions, occurrences, violations, or other matters that are the bases of the administrative action. In addition, the requesting party shall have the right to inspect and copy any written statement made by that person and any writing, as defined by Section 250 of the Evidence Code, or thing that is in the custody, or under the control, of the party receiving the request and that is relevant and not privileged. This subdivision shall constitute the exclusive method for prehearing discovery. However, nothing herein shall affect the council's authority, at any time, to investigate, inspect, monitor, or obtain and copy information under any provision of this chapter.

(2) The written request described in paragraph (1) shall be made before the hearing and within 30 days of the service of the notice described in subdivision (b). Each recipient of a request shall comply with the request within 15 days of its service by providing the names and addresses requested and by producing at a reasonable time at the council's office or another mutually agreed reasonable place the requested writings and things. The council may extend the time for response upon a showing of good cause.

(3) Except as provided in this paragraph, no party may introduce the testimony or statement of any person or any writing or thing into evidence at the hearing if that party failed to provide the name and address of the person or to produce the writing or thing for inspection and copying as provided by this subdivision. A party may introduce the testimony, statement, writing, or thing that was not identified or produced as required herein only if there is no objection or if the party establishes that the person, writing, or thing was unknown at the time when the response was made to the written request, the party could not have informed other parties within a reasonable time after learning of the existence of the person, writing, or thing, and no party would be prejudiced by the introduction of the evidence.

(e) Before the hearing has commenced, the council shall issue subpoenas at the written request of any party for the attendance of witnesses or the production of documents or other things in the custody or under the control of the person subject to the subpoena. Subpoenas issued pursuant to this section shall be subject to Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(f) (1) The council shall designate an impartial hearing officer to conduct the hearing. The hearing officer may administer oaths and affirmations, regulate the course of the hearing, question witnesses, and otherwise investigate the issues, take official notice according to the procedure provided in Division 4 (commencing with Section 450) of the Evidence Code of any technical or educational matter in the council's special field of expertise and of any matter that may be judicially noticed, set the time and place for continued hearings, fix the time for the filing of briefs and other documents, direct any party to appear and confer to consider the simplification of issues by consent, and prepare a statement of decision.

(2) In addition to the sanctions provided in Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, if the council finds that any party willfully violated, or caused the violation of, that article, the council shall enter that party's default and impose the administrative sanction set forth in the notice provided pursuant to subdivision (b).

(g) (1) Each party at the hearing shall be afforded an opportunity to present evidence, respond to evidence presented by other parties, cross-examine, and present written argument or, if permitted by the hearing officer, oral argument on the issues involved in the hearing. The council may call any party as a witness who may be examined as if under cross-examination.

(2) Each party may appear through its representative or through legal counsel.

(3) The technical rules relating to evidence and witnesses shall not apply. However, only relevant evidence is admissible.

(4) Oral evidence shall be taken only upon oath or affirmation. The hearing shall be conducted in the English language. The

proponent of any testimony to be offered by a witness who is not proficient in English shall provide, at the proponent's cost, an interpreter proficient in English and the language in which the witness will testify.

(5) The hearing shall be recorded by tape recording or other phonographic means unless all parties agree to another method of recording the proceedings.

(6) (A) At any time 10 or more days before the hearing, any party may serve on the other parties a copy of any declaration which the party proposes to introduce in evidence.

(B) The declaration shall be accompanied by a notice indicating the date of service of the notice and stating that the declarations will be offered into evidence, the declarants will not be called as witnesses, and there will be no right of cross-examination unless the party receiving the notice requests the right to cross-examine, in writing, within seven days of the service of the declarations and notice.

(C) If no request for cross-examination is served within seven days of the service of the declarations and notice described in subparagraph (B), the right to cross-examination is deemed waived and the declaration shall have the same effect as if the declarant testified orally. Notwithstanding this paragraph, a declaration may be admitted as hearsay evidence without cross-examination.

(7) Disposition of any issues involved in the hearing may be made by stipulation or settlement.

(8) If a party fails to appear at a hearing, that party's default shall be taken and the party shall be deemed to have waived the hearing and agreed to the administrative action and the grounds for that action described in the notice given pursuant to subdivision (b). The council shall serve the party with an order of default including the administrative action ordered. The order shall be effective upon service or at any other time designated by the council. The council may relieve a party from an order of default if the party applies for relief within 15 days after the service of an order of default and establishes good cause for relief. An application for relief from default shall not stay the effective date of the order unless expressly provided by the council.

(h) (1) At any time before the matter is submitted for decision, the council may amend the notice provided pursuant to subdivision (b) to set forth any further grounds for the originally noticed administrative action or any additional administrative action and the grounds therefor. The statement of the further grounds for the originally noticed administrative action, or of the grounds for any additional administrative action, shall be made with sufficient particularity to give notice of the transactions, occurrences, violations, or other matters on which the action or additional action is based. The amended notice shall be served on all parties. All parties affected by the amended notice shall be given reasonable

opportunity to respond to the amended notice as provided in this section.

(2) The council may amend the notice after the case is submitted for decision. The council shall serve each party with notice of the intended amendment and shall provide the party with an opportunity to show that the party will be prejudiced by the amendment unless the case is reopened to permit the party to introduce additional evidence. If prejudice is shown, the council shall reopen the case to permit the introduction of additional evidence.

(i) (1) Within 30 days after the conclusion of the hearing or at another time established by the council, the hearing officer shall submit a written statement of decision setting forth a recommendation for a final decision. The written statement of decision shall be made as provided in Section 11425.50 of the Government Code. The council shall serve the hearing officer's statement of decision on each party and its counsel within 10 days of its submission by the hearing officer.

(2) The council shall make the final decision which shall be based exclusively on evidence introduced at the hearing. The final decision shall be supported by substantial evidence in the record. The council also shall issue a statement of decision as provided in Section 11425.50 of the Government Code. The council shall issue an order based on its decision which shall be effective upon service or at any other time designated by the council. The council shall serve a copy of the final decision and order, within 10 days of their issuance, on each party and its counsel.

(3) The council may hold a closed session to deliberate on a decision to be reached based upon evidence introduced at the hearing.

(4) The council shall serve a certified copy of the complete record of the hearing, or any part thereof designated by a party, within 30 days after receiving the party's written request and payment of the cost of preparing the requested portions of the record. The complete record shall include all notices and orders issued by the council, a transcript of the hearing, the exhibits admitted or rejected, the written evidence and any other papers in the case, the hearing officer's statement of decision, and the final decision and order.

(j) The council shall serve all notices and other documents that are required to be served by this section on each party by personal delivery, by certified mail, return receipt requested, or by any other means designated by the council.

(k) (1) Any party aggrieved by the council's final decision and order may seek judicial review by filing a petition for a writ of mandate pursuant to Section 1085 of the Code of Civil Procedure within 30 days of the issuance of the final decision and order. If review is not sought within that period, the party's right to review shall be deemed waived.

(2) The aggrieved party shall present the complete record of the hearing or all portions of the record necessary for the court's review of the council's final decision and order. The court shall deny the petition for a writ of mandate if the record submitted by the party is incomplete. The court shall not consider any matter not contained in the record. The factual bases supporting the final decision set forth in the council's statement of decision shall be conclusive if supported by substantial evidence on the record considered as a whole.

(3) The final order shall not be stayed or enjoined during review except upon the court's grant of an order on a party's application after due notice to the council and the Attorney General. The order shall be granted only if the party establishes the substantial likelihood that it will prevail on the merits and posts a bond sufficient to protect fully the interests of the students, the council, and the Student Tuition Recovery Fund, from any loss.

(*l*) The council may adopt regulations establishing alternative means of providing notice and an opportunity to be heard in circumstances in which a full hearing is not required by law.

(m) For purposes of this section, "good cause" shall require sufficient ground or reason for the determination to be made by the council.

SEC. 8. Section 755.5 of the Evidence Code is amended to read:

755.5. (a) During any medical examination, requested by an insurer or by the defendant, of a person who is a party to a civil action and who does not proficiently speak or understand the English language, conducted for the purpose of determining damages in a civil action, an interpreter shall be present to interpret the examination in a language that the person understands. The interpreter shall be certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The fees of interpreters used under subdivision (a) shall be paid by the insurer or defendant requesting the medical examination.

(c) The record of, or testimony concerning, any medical examination conducted in violation of subdivision (a) shall be inadmissible in the civil action for which it was conducted or any other civil action.

(d) This section does not prohibit the presence of any other person to assist a party.

(e) In the event that interpreters certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code cannot be present at the medical examination, upon stipulation of the parties the requester specified in subdivision (a) shall have the discretionary authority to provisionally qualify and use other interpreters.

SEC. 9. Section 3373 of the Financial Code is amended to read:

3373. (a) Notwithstanding any other provisions of this article, whenever Section 215.2, 215.3, 215.4, 215.5, 215.7, or 215.8 is changed by the Board of Governors of the Federal Reserve System, the superintendent may by regulation adopt that same change. Any regulation adopted under this section shall expire at 12 p.m. on December 31 of the year following the calendar year in which it becomes effective.

(b) For the purpose of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, regulations adopted under this section are subject only to the provisions of Sections 11343.4, 11346.1, and 11349.6 of the Government Code.

SEC. 9.2. Section 8054 of the Financial Code is amended to read:

8054. (a) Notwithstanding any other provision of law, whenever by statute or regulation there is extended to federal associations doing business in this state any right, power, privilege, or duty not authorized for state associations, the commissioner may by regulation extend to state associations that right, power, privilege, or duty.

(b) Any regulation adopted under this section shall expire at 12 p.m. on December 31 of the year following the calendar year in which it is promulgated.

(c) For the purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code regulations adopted under this section are subject only to the provisions of Sections 11343.4, 11346.1, and 11349.6 of the Government Code.

(d) The provisions of this section shall not apply to any federal statute or regulation promulgated prior to January 1, 1984.

SEC. 9.4. Section 202 of the Fish and Game Code is amended to read:

202. The commission shall exercise its powers under this article by regulations made and promulgated pursuant to this article. Regulations adopted pursuant to this article shall not be subject to the time periods for the adoption, amendment, or repeal of regulations prescribed in Sections 11343.4, 11346.4, and 11346.8 of the Government Code.

SEC. 9.6. Section 355 of the Fish and Game Code is amended to read:

355. The commission may, annually, promulgate regulations pertaining to migratory birds to conform with or to further restrict the rules and regulations prescribed pursuant to the Migratory Bird Treaty Act.

Regulations adopted under this section are not subject to Sections 11343.4, 11346.1, 11346.4, and 11346.8 of the Government Code.

Every regulation of the commission made pursuant to this article shall be filed with the Secretary of State, and shall become effective upon filing unless otherwise specified in the regulations.

SEC. 9.8. Section 3541.3 of the Government Code is amended to read:

3541.3. The board shall have all of the following powers and duties:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections which shall be conducted by means of secret ballot elections, and certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall these lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) Within its discretion, to conduct studies relating to employer-employee relations, including the collection, analysis, and making available of data relating to wages, benefits, and employment practices in public and private employment, and, when it appears necessary in its judgment to the accomplishment of the purposes of this chapter, recommend legislation. The board shall report to the Legislature by October 15 of each year on its activities during the immediately preceding fiscal year. The board may enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter.

(g) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(h) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this chapter, except a hearing to determine an unfair practice charge.

(i) To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(j) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings, or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any

person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(k) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(*l*) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(m) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(n) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

SEC. 10. Section 3563 of the Government Code is amended to read:

3563. This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections which shall be conducted by means of secret ballot elections, and to certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall the lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with

Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.

(h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(j) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(k) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(*l*) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(m) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

SEC. 11. Section 8541 of the Government Code is amended to read:

8541. In carrying out its duties and responsibilities, the commission shall have all of the following powers:

(a) To meet at any time and place as it may deem proper.

(b) As a body or, on the authorization of the commission, as a subcommittee composed of one or more members, to hold hearings at any time and place as it may deem proper.

(c) To issue subpoenas to compel the attendance of witnesses and the production of books, records, papers, accounts, reports, and documents.

(d) To administer oaths.

(e) To employ, pursuant to laws and regulations governing state civil service, a secretary and any clerical, legal, and technical assistants as may appear necessary.

(f) To contract with any other agencies, public or private, as it deems necessary, for the rendition and affording of any services, facilities, studies and reports to the commission as will best assist it to carry out its duties and responsibilities.

(g) To cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and to direct the sheriff of any county or any marshal to serve subpoenas, orders, and other process.

(h) To certify to the superior court of any county in which proceedings are held, the facts concerning the disobedience or resistance, by any person, of any lawful order, or the refusal of any person to respond to a subpoena, to take the oath or affirmation as a witness, or to be examined, or the misconduct of any person during a hearing; and to receive the assistance of the court in enforcing orders and process, in the manner prescribed by Article 12 (commencing with Section 11455.10) of Chapter 4.5 of Part 1 of Division 3.

(i) To cooperate with every department, agency, or instrumentality in the state government; and to secure directly from every department, agency, or instrumentality full cooperation, access to its records, and access to any information, suggestions, estimates, data, and statistics it may have available.

(j) To authorize its agents and employees to absent themselves from the state where necessary for the performance of their duties.

(k) To do any and all other things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the powers expressly granted it, notwithstanding any authority expressly granted to any officer or employee of the executive branch of state government.

SEC. 12. Section 11018 of the Government Code is amended to read:

11018. Every state agency which is authorized by any law to conduct administrative hearings but is not subject to Chapter 5 (commencing with Section 11500) shall nonetheless comply with Sections 11435.20, 11435.25, and 11435.55 relative to the furnishing of language assistance at the hearing.

SEC. 13. Section 11125.7 of the Government Code is amended to read:

11125.7. (a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not

limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) This section is not applicable to closed sessions held pursuant to Section 11126.

(d) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(e) This section is not applicable to hearings conducted by the State Board of Control pursuant to Sections 13963 and 13963.1.

(f) This section is not applicable to agenda items which involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

SEC. 14. Section 11340.4 is added to the Government Code, to read:

11340.4. (a) The office is authorized and directed to do the following:

(1) Study the subject of administrative rulemaking in all its aspects.

(2) In the interest of fairness, uniformity, and the expedition of business, submit its suggestions to the various agencies.

(3) Report its recommendations to the Governor and Legislature at the commencement of each general session.

(b) All agencies of the state shall give the office ready access to their records and full information and reasonable assistance in any matter of research requiring recourse to them or to data within their knowledge or control. Nothing in this subdivision authorizes an agency to provide access to records required by statute to be kept confidential.

SEC. 15. Section 11340.5 of the Government Code is amended to read:

11340.5. (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in subdivision (g) of Section 11342, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

(b) If the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other

rule that has not been adopted as a regulation and filed with the Secretary of State pursuant to this chapter, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation as defined in subdivision (g) of Section 11342.

(c) The office shall do all of the following:

(1) File its determination upon issuance with the Secretary of State.

(2) Make its determination known to the agency, the Governor, and the Legislature.

(3) Publish its determination in the California Regulatory Notice Register within 15 days of the date of issuance.

(4) Make its determination available to the public and the courts.

(d) Any interested person may obtain judicial review of a given determination by filing a written petition requesting that the determination of the office be modified or set aside. A petition shall be filed with the court within 30 days of the date the determination is published.

(e) A determination issued by the office pursuant to this section shall not be considered by a court, or by an administrative agency in an adjudicatory proceeding if all of the following occurs:

(1) The court or administrative agency proceeding involves the party that sought the determination from the office.

(2) The proceeding began prior to the party's request for the office's determination.

(3) At issue in the proceeding is the question of whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is the legal basis for the adjudicatory action is a regulation as defined in subdivision (g) of Section 11342.

SEC. 15.1. Section 11342 of the Government Code is amended to read:

11342. In this chapter, unless otherwise specifically indicated, the following definitions apply:

(a) "Agency" and "state agency" do not include an agency in the judicial or legislative departments of the state government.

(b) "Office" means the Office of Administrative Law.

(c) "Order of repeal" means any resolution, order or other official act of a state agency that expressly repeals a regulation in whole or in part.

(d) "Performance standard" means a regulation that describes an objective with the criteria stated for achieving the objective.

(e) "Plain English" means language that can be interpreted by a person who has no more than an eighth grade level of proficiency in English.

(f) "Prescriptive standard" means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.

(g) "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the state agency. "Regulation" does not mean or include legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization, or any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.

(h) (1) "Small business" means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, unless excluded in paragraph (2), that is both of the following:

(A) Independently owned and operated.

(B) Not dominant in its field of operation.

(2) "Small business" does not include the following professional and business activities:

(A) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an investment adviser.

(B) An insurance company, either stock or mutual.

(C) A mineral, oil, or gas broker; a subdivider or developer.

(D) A landscape architect, an architect, or a building designer.

(E) An entity organized as a nonprofit institution.

(F) An entertainment activity or production, including a motion picture, a stage performance, a television or radio station, or a production company.

(G) A utility, a water company, or a power transmission company generating and transmitting more than 4.5 million kilowatt hours annually.

(H) A petroleum producer, a natural gas producer, a refiner, or a pipeline.

(I) A business activity exceeding the following annual gross receipts in the categories of:

(i) Agriculture, one million dollars ($1,000,000).

(ii) General construction, nine million five hundred thousand dollars ($9,500,000).

(iii) Special trade construction, five million dollars ($5,000,000).

(iv) Retail trade, two million dollars ($2,000,000).

(v) Wholesale trade, nine million five hundred thousand dollars ($9,500,000).

(vi) Services, two million dollars ($2,000,000).

(vii) Transportation and warehousing, one million five hundred thousand dollars ($1,500,000).

(J) A manufacturing enterprise exceeding 250 employees.

(K) A health care facility exceeding 150 beds or one million five hundred thousand dollars ($1,500,000) in annual gross receipts.

SEC. 15.2. Section 11346.14 of the Government Code is repealed.

SEC. 15.3. Section 11346.2 of the Government Code is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. If the regulation affects small business, the agency shall draft the regulation in plain English, as defined in subdivision (e) of Section 11342. However, if it is not feasible to draft the regulation in plain English due to the technical nature of the regulation, the agency shall prepare a noncontrolling plain English summary of the regulation.

(2) The agency shall include a notation following the express terms of each regulation listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by the regulation.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A description of the public problem, administrative requirement, or other condition or circumstance that each adoption, amendment, or repeal is intended to address.

(2) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(3) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(4) (A) A description of the alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of any alternatives the agency has identified that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

(5) Facts, evidence, documents, testimony, or other evidence upon which the agency relies to support a finding that the action will not have a significant adverse economic impact on business.

(6) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

SEC. 15.5. Section 11346.6 of the Government Code is repealed.

SEC. 15.6. Section 11349.5 of the Government Code is amended to read:

11349.5. (a) To initiate a review of a decision by the office, the agency shall file a written Request for Review with the Governor's Legal Affairs Secretary within 10 days of receipt of the written opinion provided by the office pursuant to subdivision (b) of Section 11349.3. The Request for Review shall include a complete statement as to why the agency believes the decision is incorrect and should be overruled. Along with the Request for Review, the agency shall submit all of the following:

(1) The office's written decision detailing the reasons for disapproval required by subdivision (b) of Section 11349.3.

(2) Copies of all regulations, notices, statements, and other documents which were submitted to the office.

(b) A copy of the agency's Request for Review shall be delivered to the office on the same day it is delivered to the Governor's office. The office shall file its written response to the agency's request with the Governor's Legal Affairs Secretary within 10 days and deliver a copy of its response to the agency on the same day it is delivered to the Governor's office.

(c) The Governor's office shall provide the requesting agency and the office with a written decision within 15 days of receipt of the response by the office to the agency's Request for Review. Upon receipt of the decision, the office shall publish in the California Regulatory Notice Register the agency's Request for Review, the office's response thereto, and the decision of the Governor's office.

(d) The time requirements set by subdivisions (a) and (b) may be shortened by the Governor's office for good cause.

(e) The Governor may overrule the decision of the office disapproving a proposed regulation, an order repealing an emergency regulation adopted pursuant to subdivision (b) of Section 11346.1, or a decision refusing to allow the readoption of an emergency regulation pursuant to Section 11346.1. In that event, the office shall immediately transmit the regulation to the Secretary of State for filing.

(f) Upon overruling the decision of the office, the Governor shall immediately transmit to the Committees on Rules of both houses of the Legislature a statement of his or her reasons for overruling the decision of the office, along with copies of the adopting agency's initial statement of reasons issued pursuant to Section 11346.2 and the office's statement regarding the disapproval of a regulation issued pursuant to subdivision (b) of Section 11349.3. The Governor's action and the reasons therefor shall be published in the California Regulatory Notice Register.

SEC. 15.7. Section 11349.9 of the Government Code is amended to read:

11349.9. (a) To initiate a review of the office's Notice of Repeal pursuant to Section 11349.8, the agency shall appeal the office's decision by filing a written Request for Review with the Governor's Legal Affairs Secretary within 10 days of receipt of the Notice of Repeal and written decision provided for by paragraph (2) of subdivision (d) of Section 11349.8. The Request for Review shall include a complete statement as to why the agency believes the decision is incorrect and should be overruled. Along with the Request for Review, the agency shall submit all of the following:

(1) The office's written opinion detailing the reasons for repeal required by paragraph (2) of subdivision (d) of Section 11349.8.

(2) Copies of all statements and other documents that were submitted to the office.

(b) A copy of the agency's Request for Review shall be delivered to the office on the same day it is delivered to the Governor's office. The office shall file its written response to the agency's request with the Governor's Legal Affairs Secretary within 10 days, and deliver a copy of its response to the agency on the same day it is delivered to the Governor's office.

(c) The Governor's office shall provide the requesting agency and the office with a written decision within 15 days of receipt of the response by the office to the agency's Request for Review. Upon receipt of the decision, the office shall publish in the California Regulatory Notice Register the agency's Request for Review, the office's response thereto, and the decision of the Governor's office.

(d) The time requirements set by subdivisions (a) and (b) may be shortened by the Governor's office for good cause.

(e) In the event the Governor overrules the decision of the office, the office shall immediately transmit the regulation to the Secretary of State for filing.

(f) Upon overruling the decision of the office, the Governor shall transmit to the rules committees of both houses of the Legislature a statement of the reasons for overruling the decision of the office.

SEC. 15.8. Section 11350 of the Government Code is amended to read:

11350. (a) Any interested person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The right to judicial determination shall not be affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Section 11340.7 before the agency promulgating the regulations. The regulation may be declared to be invalid for a substantial failure to comply with this chapter, or, in the case of an emergency regulation or order to repeal, upon the ground that the facts recited in the statement do not constitute an emergency within the provisions of Section 11346.1.

(b) In addition to any other ground that may exist, a regulation may be declared invalid if either of the following exists:

(1) The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

(2) The agency declaration pursuant to paragraph (8) of subdivision (a) of Section 11346.5 is in conflict with substantial evidence in the record.

For purposes of this section, the record shall be deemed to consist of all material maintained in the file of the rulemaking proceeding as defined in Section 11347.3.

(c) The approval of a regulation by the office or the Governor's overruling of a decision of the office disapproving a regulation shall not be considered by a court in any action for declaratory relief brought with respect to a regulation.

SEC. 15.9. Section 11350 of the Government Code is amended to read:

11350. (a) Any interested person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The right to judicial determination shall not be affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Section 11340.7 before the agency promulgating the regulations. The regulation may be declared to be invalid for a substantial failure to comply with this chapter, or, in the case of an emergency regulation or order to repeal, upon the ground that the facts recited in the statement do not constitute an emergency within the provisions of Section 11346.1.

(b) In addition to any other ground that may exist, a regulation may be declared invalid if either of the following exists:

(1) The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

(2) The agency declaration pursuant to paragraph (8) of subdivision (a) of Section 11346.5 is in conflict with substantial evidence in the record.

For purposes of this section, the record shall be deemed to consist of all material maintained in the file of the rulemaking proceeding as defined in Section 11347.3.

(c) (1) In addition to any other ground that may exist, a regulation shall be declared invalid if the regulation has not been made available to the public pursuant to subdivision (b) of Section 11343.4. If the court determines that an agency has failed to mail written copies of new regulations to a person who would be affected by the regulation within 10 days after receipt of any written or oral requests for these copies, the court shall deem the regulation to be in violation of subdivision (b) of Section 11343.4 and shall invalidate the regulation.

(2) If a regulation has been declared invalid because of failure to comply with subdivision (b) of Section 11343.4, the adopting agency shall not be required to reinitiate adoption, review, and approval procedures for that regulation in accordance with this chapter. The regulation shall be deemed valid and enforceable upon the agency's compliance with the 30-day availability requirement specified in subdivision (b) of Section 11343.4.

(d) The approval of a regulation by the office or the Governor's overruling of a decision of the office disapproving a regulation shall

not be considered by a court in any action for declaratory relief brought with respect to a regulation.

SEC. 16. An article heading is added immediately preceding Section 11370 to Chapter 4 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

Article 1. General Provisions

SEC. 16.5. Section 11370 of the Government Code is amended to read:

11370. Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) constitute, and may be cited as, the Administrative Procedure Act.

SEC. 17. Section 11370.3 of the Government Code is amended to read:

11370.3. The director shall appoint and maintain a staff of full-time, and may appoint pro tempore part-time, administrative law judges qualified under Section 11502 which is sufficient to fill the needs of the various state agencies. The director shall also appoint any other technical and clerical personnel as may be required to perform the duties of the office. The director shall assign an administrative law judge for any proceeding arising under Chapter 5 (commencing with Section 11500) and, upon request from any agency, may assign an administrative law judge to conduct other administrative proceedings not arising under that chapter and shall assign hearing reporters as required. Any administrative law judge or other employee so assigned shall be deemed an employee of the office and not of the agency to which he or she is assigned. When not engaged in hearing cases, administrative law judges may be assigned by the director to perform other duties vested in or required of the office, including those provided for in Section 11370.5.

SEC. 18. Section 11370.5 of the Government Code is amended to read:

11370.5. (a) The office is authorized and directed to study the subject of administrative adjudication in all its aspects; to submit its suggestions to the various agencies in the interests of fairness, uniformity and the expedition of business; and to report its recommendations to the Governor and Legislature at the commencement of each general session. All departments, agencies, officers, and employees of the state shall give the office ready access to their records and full information and reasonable assistance in any matter of research requiring recourse to them or to data within their knowledge or control. Nothing in this section authorizes an agency to provide access to records required by statute to be kept confidential.

(b) The office may adopt rules and regulations to carry out the functions and duties of the office under the Administrative

Procedure Act. The regulations are subject to Chapter 3.5 (commencing with Section 11340).

SEC. 19. An article heading is added immediately preceding Section 11371 to Chapter 4 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

Article 2. Medical Quality Hearing Panel

SEC. 19.5. Section 11371 of the Government Code is amended to read:

11371. (a) There is within the Office of Administrative Hearings a Medical Quality Hearing Panel, consisting of no fewer than five full-time administrative law judges. The administrative law judges shall have medical training as recommended by the Division of Medical Quality of the Medical Board of California and approved by the Director of the Office of Administrative Hearings.

(b) The director shall determine the qualifications of panel members, supervise their training, and coordinate the publication of a reporter of decisions pursuant to this section. The panel shall include only those persons specifically qualified and shall at no time constitute more than 25 percent of the total number of administrative law judges within the Office of Administrative Hearings. If the members of the panel do not have a full workload, they may be assigned work by the Director of the Office of Administrative Hearings. When the medically related case workload exceeds the capacity of the members of the panel, additional judges shall be requested to be added to the panels as appropriate. When this workload overflow occurs on a temporary basis, the Director of the Office of Administrative Hearings shall supply judges from the Office of Administrative Hearings to adjudicate the cases.

(c) The decisions of the administrative law judges of the panel, together with any court decisions reviewing those decisions, shall be published in a quarterly "Medical Discipline Report," to be funded from the Contingent Fund of the Medical Board of California.

(d) The administrative law judges of the panel shall have panels of experts available. The panels of experts shall be appointed by the Director of the Office of Administrative Hearings, with the advice of the Medical Board of California. These panels of experts may be called as witnesses by the administrative law judges of the panel to testify on the record about any matter relevant to a proceeding and subject to cross-examination by all parties, and Section 11430.30 does not apply in a proceeding under this section. The administrative law judge may award reasonable expert witness fees to any person or persons serving on a panel of experts, which shall be paid from the Contingent Fund of the Medical Board of California.

(e) On or before April 1, 1997, the Medical Board of California shall prepare, in consultation with the Office of Administrative Hearings, an analysis and report that evaluates the effectiveness of

the Medical Quality Hearing Panel since its creation. Among other things, the report shall analyze whether administrative adjudications against physicians have been expedited, the aging of cases at the office, whether administrative decisions and penalties ordered in the discipline of physicians have become more consistent, and whether the panels of the Division of Medical Quality have adopted more proposed decisions than prior to the creation of the panel. The board shall send a copy of its report to the Chairpersons of the Senate Committee on Business and Professions and the Assembly Committee on Health, to the Office of Administrative Hearings, and to the Director of Consumer Affairs.

(f) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 20. Article 3 (commencing with Section 11380) is added to Chapter 4 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

Article 3. State Agency Reports and Forms Appeals

11380. (a) (1) The office shall hear and render a decision on any appeal filed by a business, pursuant to subdivision (c) of Section 14775, in the event the business contests the certification by a state agency head that reporting requirements meet established criteria and shall not be eliminated.

(2) Before a business may file an appeal with the office pursuant to subdivision (c) of Section 14775, the business shall file a challenge to a form or report required by a state agency with that state agency. Within 60 days of filing the challenge with a state agency, the state agency shall either eliminate the form or report or provide written justification for its continued use.

(3) A business may appeal a state agency's written justification for the continued use of a form or report with the office.

(4) If a state agency fails to respond within 60 days of the filing of a challenge pursuant to paragraph (2), the business shall have an immediate right to file an appeal with the office.

(b) No later than January 1, 1996, the office shall adopt procedures governing the filing, hearing, and disposition of appeals. The procedures shall include, but shall not be limited to, provisions that assure that appeals are heard and decisions rendered by the office in a fair, impartial, and timely fashion.

(c) The office may charge appellants a reasonable fee to pay for costs it incurs in complying with this section.

SEC. 21. Chapter 4.5 (commencing with Section 11400) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 4.5. ADMINISTRATIVE ADJUDICATION: GENERAL PROVISIONS

Article 1. Preliminary Provisions

11400. (a) This chapter and Chapter 5 (commencing with Section 11500) constitute the administrative adjudication provisions of the Administrative Procedure Act.

(b) A reference in any other statute or in a rule of court, executive order, or regulation, to a provision formerly found in Chapter 5 (commencing with Section 11500) that is superseded by a provision of this chapter, means the applicable provision of this chapter.

11400.10. (a) This chapter is operative on July 1, 1997.

(b) This chapter is applicable to an adjudicative proceeding commenced on or after July 1, 1997.

(c) This chapter is not applicable to an adjudicative proceeding commenced before July 1, 1997, except an adjudicative proceeding conducted on a remand from a court or another agency on or after July 1, 1997.

11400.20. (a) Before, on, or after July 1, 1997, an agency may adopt interim or permanent regulations to govern an adjudicative proceeding under this chapter.

(b) Except as provided in Section 11351:

(1) Interim regulations need not comply with Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5, but are governed by Chapter 3.5 (commencing with Section 11340) in all other respects.

(2) Interim regulations expire on December 31, 1998, unless earlier terminated or replaced by or readopted as permanent regulations under paragraph (3). If on December 31, 1998, an agency has completed proceedings to replace or readopt interim regulations and has submitted permanent regulations for review by the Office of Administrative Law, but permanent regulations have not yet been filed with the Secretary of State, the interim regulations are extended until the date permanent regulations are filed with the Secretary of State or March 31, 1999, whichever is earlier.

(3) Permanent regulations are subject to all the provisions of Chapter 3.5 (commencing with Section 11340), except that if by December 31, 1998, an agency has submitted the regulations for review by the Office of Administrative Law, the regulations are not subject to review for necessity under Section 11349.1 or 11350.

Article 2. Definitions

11405.10. Unless the provision or context requires otherwise, the definitions in this article govern the construction of this chapter.

11405.20. "Adjudicative proceeding" means an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision.

11405.30. "Agency" means a board, bureau, commission, department, division, office, officer, or other administrative unit, including the agency head, and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf of or under the authority of the agency head. To the extent it purports to exercise authority pursuant to this chapter, an administrative unit otherwise qualifying as an agency shall be treated as a separate agency even if the unit is located within or subordinate to another agency.

11405.40. "Agency head" means a person or body in which the ultimate legal authority of an agency is vested, and includes a person or body to which the power to act is delegated pursuant to authority to delegate the agency's power to hear and decide.

11405.50. (a) "Decision" means an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.

(b) Nothing in this section limits any of the following:

(1) The precedential effect of a decision under Section 11425.60.

(2) The authority of an agency to make a declaratory decision pursuant to Article 14 (commencing with Section 11465.10).

11405.60. "Party" includes the agency that is taking action, the person to which the agency action is directed, and any other person named as a party or allowed to appear or intervene in the proceeding. If the agency that is taking action and the agency that is conducting the adjudicative proceeding are separate agencies, the agency that is taking action is a party and the agency that is conducting the adjudicative proceeding is not a party.

11405.70. "Person" includes an individual, partnership, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character.

11405.80. "Presiding officer" means the agency head, member of the agency head, administrative law judge, hearing officer, or other person who presides in an adjudicative proceeding.

Article 3. Application of Chapter

11410.10. This chapter applies to a decision by an agency if, under the federal or state Constitution or a federal or state statute, an evidentiary hearing for determination of facts is required for formulation and issuance of the decision.

11410.20. Except as otherwise expressly provided by statute:

(a) This chapter applies to all agencies of the state.

(b) This chapter does not apply to the Legislature, the courts or judicial branch, or the Governor or office of the Governor.

11410.30. (a) As used in this section, "local agency" means a county, city, district, public authority, public agency, or other political subdivision or public corporation in the state other than the state.

(b) This chapter does not apply to a local agency except to the extent the provisions are made applicable by statute.

(c) This chapter applies to an agency created or appointed by joint or concerted action of the state and one or more local agencies.

11410.40. Notwithstanding any other provision of this article, by regulation, ordinance, or other appropriate action, an agency may adopt this chapter or any of its provisions for the formulation and issuance of a decision, even though the agency or decision is exempt from application of this chapter.

11410.50. This chapter applies to an adjudicative proceeding required to be conducted under Chapter 5 (commencing with Section 11500) unless the statutes relating to the proceeding provide otherwise.

Article 4. Governing Procedure

11415.10. (a) The governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding. If no other governing procedure is provided by statute or regulation, an agency may conduct an adjudicative proceeding under the administrative adjudication provisions of the Administrative Procedure Act.

(b) This chapter supplements the governing procedure by which an agency conducts an adjudicative proceeding.

11415.20. A state statute or a federal statute or regulation applicable to a particular agency or decision prevails over a conflicting or inconsistent provision of this chapter.

11415.30. (a) To the extent necessary to avoid a loss or delay of funds or services from the federal government that would otherwise be available to the state, the Governor may do any of the following by executive order:

(1) Suspend, in whole or in part, any administrative adjudication provision of the Administrative Procedure Act.

(2) Adopt a rule of procedure that will avoid the loss or delay.

(b) The Governor shall rescind an executive order issued under this section as soon as it is no longer necessary to prevent the loss or delay of funds or services from the federal government.

(c) If an administrative adjudication provision is suspended or rule of procedure is adopted pursuant to this section, the Governor shall promptly report the suspension or adoption to the Legislature. The report shall include recommendations concerning any legislation that may be necessary to conform the provision to federal law.

11415.40. Except to the extent prohibited by another statute or regulation, a person may waive a right conferred on the person by the administrative adjudication provisions of the Administrative Procedure Act.

11415.50. (a) An agency may provide any appropriate procedure for a decision for which an adjudicative proceeding is not required.

(b) An adjudicative proceeding is not required for informal factfinding or an informal investigatory hearing, or a decision to initiate or not to initiate an investigation, prosecution, or other proceeding before the agency, another agency, or a court, whether in response to an application for an agency decision or otherwise.

11415.60. (a) An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

(b) A settlement may be made before or after issuance of an agency pleading, except that in an adjudicative proceeding to determine whether an occupational license should be revoked, suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during, or after the hearing.

(c) A settlement is subject to any necessary agency approval. An agency head may delegate the power to approve a settlement. The terms of a settlement may not be contrary to statute or regulation, except that the settlement may include sanctions the agency would otherwise lack power to impose.

Article 5. Alternative Dispute Resolution

11420.10. (a) An agency, with the consent of all the parties, may refer a dispute that is the subject of an adjudicative proceeding for resolution by any of the following means:

(1) Mediation by a neutral mediator.

(2) Binding arbitration by a neutral arbitrator. An award in a binding arbitration is subject to judicial review in the manner provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(3) Nonbinding arbitration by a neutral arbitrator. The arbitrator's decision in a nonbinding arbitration is final unless within 30 days after the arbitrator delivers the award to the agency head a party requests that the agency conduct a de novo adjudicative proceeding. If the decision in the de novo proceeding is not more

favorable to the party electing the de novo proceeding, the party shall pay the costs and fees specified in Section 1141.21 of the Code of Civil Procedure insofar as applicable in the adjudicative proceeding.

(b) If another statute requires mediation or arbitration in an adjudicative proceeding, that statute prevails over this section.

(c) This section does not apply in an adjudicative proceeding to the extent an agency by regulation provides that this section is not applicable in a proceeding of the agency.

11420.20. (a) The Office of Administrative Hearings shall adopt and promulgate model regulations for alternative dispute resolution under this article. The model regulations govern alternative dispute resolution by an agency under this article, except to the extent the agency by regulation provides inconsistent rules or provides that the model regulations are not applicable in a proceeding of the agency.

(b) The model regulations shall include provisions for selection and compensation of a mediator or arbitrator, qualifications of a mediator or arbitrator, and confidentiality of the mediation or arbitration proceeding.

11420.30. Notwithstanding any other provision of law, a communication made in alternative dispute resolution under this article is protected to the following extent:

(a) Anything said, any admission made, and any document prepared in the course of, or pursuant to, mediation under this article is a confidential communication, and a party to the mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding. This subdivision does not limit the admissibility of evidence if all parties to the proceedings consent.

(b) No reference to nonbinding arbitration proceedings, a decision of the arbitrator that is rejected by a party's request for a de novo adjudicative proceeding, the evidence produced, or any other aspect of the arbitration may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

(c) No mediator or arbitrator is competent to testify in a subsequent administrative or civil proceeding as to any statement, conduct, decision, or order occurring at, or in conjunction with, the alternative dispute resolution.

(d) Evidence otherwise admissible outside of alternative dispute resolution under this article is not inadmissible or protected from disclosure solely by reason of its introduction or use in alternative dispute resolution under this article.

Article 6. Administrative Adjudication Bill of Rights

11425.10. (a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements:

(1) The agency shall give the person to which the agency action is directed notice and an opportunity to be heard, including the opportunity to present and rebut evidence.

(2) The agency shall make available to the person to which the agency action is directed a copy of the governing procedure, including a statement whether Chapter 5 (commencing with Section 11500) is applicable to the proceeding.

(3) The hearing shall be open to public observation as provided in Section 11425.20.

(4) The adjudicative function shall be separated from the investigative, prosecutorial, and advocacy functions within the agency as provided in Section 11425.30.

(5) The presiding officer is subject to disqualification for bias, prejudice, or interest as provided in Section 11425.40.

(6) The decision shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision as provided in Section 11425.50.

(7) A decision may not be relied on as precedent unless the agency designates and indexes the decision as precedent as provided in Section 11425.60.

(8) Ex parte communications shall be restricted as provided in Article 7 (commencing with Section 11430.10).

(9) Language assistance shall be made available as provided in Article 8 (commencing with Section 11435.05) by an agency described in Section 11018 or 11435.15.

(b) The requirements of this section apply to the governing procedure by which an agency conducts an adjudicative proceeding without further action by the agency, and prevail over a conflicting or inconsistent provision of the governing procedure, subject to Section 11415.20. The governing procedure by which an agency conducts an adjudicative proceeding may include provisions equivalent to, or more protective of the rights of the person to which the agency action is directed than, the requirements of this section.

11425.20. (a) A hearing shall be open to public observation. Nothing in this subdivision limits the authority of the presiding officer to order closure of a hearing or make other protective orders to the extent necessary or proper for any of the following purposes:

(1) To satisfy the United States Constitution, the California Constitution, federal or state statute, or other law, including but not limited to laws protecting privileged, confidential, or other protected information.

(2) To ensure a fair hearing in the circumstances of the particular case.

(3) To conduct the hearing, including the manner of examining witnesses, in a way that is appropriate to protect a minor witness or a witness with a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code, from intimidation or other harm, taking into account the rights of all persons.

(b) To the extent a hearing is conducted by telephone, television, or other electronic means, subdivision (a) is satisfied if members of the public have an opportunity to do both of the following:

(1) At reasonable times, hear or inspect the agency's record, and inspect any transcript obtained by the agency.

(2) Be physically present at the place where the presiding officer is conducting the hearing.

(c) This section does not apply to a prehearing conference, settlement conference, or proceedings for alternative dispute resolution other than binding arbitration.

11425.30. (a) A person may not serve as presiding officer in an adjudicative proceeding in any of the following circumstances:

(1) The person has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.

(2) The person is subject to the authority, direction, or discretion of a person who has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.

(b) Notwithstanding subdivision (a):

(1) A person may serve as presiding officer at successive stages of an adjudicative proceeding.

(2) A person who has participated only as a decisionmaker or as an advisor to a decisionmaker in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding or its preadjudicative stage may serve as presiding officer in the proceeding.

(c) The provisions of this section governing separation of functions as to the presiding officer also govern separation of functions as to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

11425.40. (a) The presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding.

(b) It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the presiding officer:

(1) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.

(2) Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding.

(3) Has as a lawyer or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding.

(c) The provisions of this section governing disqualification of the presiding officer also govern disqualification of the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(d) An agency that conducts an adjudicative proceeding may provide by regulation for peremptory challenge of the presiding officer.

11425.50. (a) The decision shall be in writing and shall include a statement of the factual and legal basis for the decision.

(b) The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.

(c) The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(d) Nothing in this section limits the information that may be contained in the decision, including a summary of evidence relied on.

(e) A penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340).

11425.60. (a) A decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency.

(b) An agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur. Designation of a decision or part of a decision as a precedent decision is not rulemaking and need not be done under Chapter 3.5 (commencing with Section 11340). An agency's designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedent decision is not subject to judicial review.

(c) An agency shall maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The

index shall be made available to the public by subscription, and its availability shall be publicized annually in the California Regulatory Notice Register.

(d) This section applies to decisions issued on or after July 1, 1997. Nothing in this section precludes an agency from designating as a precedent decision a decision issued before July 1, 1997.

Article 7. Ex Parte Communications

11430.10. (a) While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.

(c) For the purpose of this section, a proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.

11430.20. A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

(a) The communication is required for disposition of an ex parte matter specifically authorized by statute.

(b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.

11430.30. A communication otherwise prohibited by Section 11430.10 from an employee or representative of an agency that is a party to the presiding officer is permissible in any of the following circumstances:

(a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.

(b) The communication is for the purpose of advising the presiding officer concerning a settlement proposal advocated by the advisor.

(c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is nonprosecutorial in character:

(1) The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed

on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

(2) The advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.

11430.40. If, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section 11430.50.

11430.50. (a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the presiding officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

11430.60. Receipt by the presiding officer of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

11430.70. (a) Subject to subdivision (b), the provisions of this article governing ex parte communications to the presiding officer also govern ex parte communications in an adjudicative proceeding to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized ratemaking proceeding if the content of the communication is

disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

11430.80. (a) There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) This section does not apply where the agency head or other person or body to which the power to hear or decide in the proceeding is delegated serves as both presiding officer and agency head, or where the presiding officer does not issue a decision in the proceeding.

Article 8. Language Assistance

11435.05. As used in this article, "language assistance" means oral interpretation or written translation into English of a language other than English or of English into another language for a party or witness who cannot speak or understand English or who can do so only with difficulty.

11435.10. Nothing in this article limits the application or effect of Section 754 of the Evidence Code to interpretation for a deaf or hard-of-hearing party or witness in an adjudicative proceeding.

11435.15. (a) The following state agencies shall provide language assistance in adjudicative proceedings to the extent provided in this article:

Agricultural Labor Relations Board
Department of Alcohol and Drug Abuse
State Athletic Commission California
Unemployment Insurance Appeals Board
Board of Prison Terms
State Board of Barbering and Cosmetology
State Department of Developmental Services
Public Employment Relations Board
Franchise Tax Board
State Department of Health Services
Department of Housing and Community Development
Department of Industrial Relations
State Department of Mental Health
Department of Motor Vehicles
Notary Public Section, Office of the Secretary of State
Public Utilities Commission
Office of Statewide Health Planning and Development
State Department of Social Services
Workers' Compensation Appeals Board
Department of the Youth Authority
Youthful Offender Parole Board
Department of Insurance

State Personnel Board
California Board of Podiatric Medicine
Board of Psychology

(b) Nothing in this section prevents an agency other than an agency listed in subdivision (a) from electing to adopt any of the procedures in this article, provided that any selection of an interpreter is subject to Section 11435.30.

(c) Nothing in this section prohibits an agency from providing an interpreter during a proceeding to which this chapter does not apply, including an informal factfinding or informal investigatory hearing.

(d) This article applies to an agency listed in subdivision (a) notwithstanding a general provision that this chapter does not apply to some or all of an agency's adjudicative proceedings.

11435.20. (a) The hearing, or any medical examination conducted for the purpose of determining compensation or monetary award, shall be conducted in English.

(b) If a party or the party's witness does not proficiently speak or understand English and before commencement of the hearing or medical examination requests language assistance, an agency subject to the language assistance requirement of this article shall provide the party or witness an interpreter.

11435.25. (a) The cost of providing an interpreter under this article shall be paid by the agency having jurisdiction over the matter if the presiding officer so directs, otherwise by the party at whose request the interpreter is provided.

(b) The presiding officer's decision to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the party in need of the interpreter to pay.

(c) Notwithstanding any other provision of this section, in a hearing before the Workers' Compensation Appeals Board or the Division of Workers' Compensation relating to workers' compensation claims, the payment of the costs of providing an interpreter shall be governed by the rules and regulations promulgated by the Workers' Compensation Appeals Board or the Administrative Director of the Division of Workers' Compensation, as appropriate.

11435.30. (a) The State Personnel Board shall establish, maintain, administer, and publish annually an updated list of certified administrative hearing interpreters it has determined meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to Section 11435.40. Any interpreter so listed may be examined by each employing agency to determine the interpreter's knowledge of the employing agency's technical program terminology and procedures.

(b) Court interpreters certified pursuant to Section 68562, and interpreters listed on the State Personnel Board's recommended lists

of court and administrative hearing interpreters prior to July 1, 1993, shall be deemed certified for purposes of this section.

11435.35. (a) The State Personnel Board shall establish, maintain, administer, and publish annually, an updated list of certified medical examination interpreters it has determined meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to Section 11435.40.

(b) Court interpreters certified pursuant to Section 68562 and administrative hearing interpreters certified pursuant to Section 11435.30 shall be deemed certified for purposes of this section.

11435.40. (a) The State Personnel Board shall designate the languages for which certification shall be established under Sections 11435.30 and 11435.35. The languages designated shall include, but not be limited to, Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the State Personnel Board finds that there is an insufficient need for interpreting assistance in these languages.

(b) The language designations shall be based on the following:

(1) The language needs of non-English-speaking persons appearing before the administrative agencies, as determined by consultation with the agencies.

(2) The cost of developing a language examination.

(3) The availability of experts needed to develop a language examination.

(4) Other information the board deems relevant.

11435.45. (a) The State Personnel Board shall establish and charge fees for applications to take interpreter examinations and for renewal of certifications. The purpose of these fees is to cover the annual projected costs of carrying out this article. The fees may be adjusted each fiscal year by a percent that is equal to or less than the percent change in the California Necessities Index prepared by the Commission on State Finance.

(b) Each certified administrative hearing interpreter and each certified medical examination interpreter shall pay a fee, due on July 1 of each year, for the renewal of the certification. Court interpreters certified under Section 68562 shall not pay any fees required by this section.

(c) If the amount of money collected in fees is not sufficient to cover the costs of carrying out this article, the board shall charge and be reimbursed a pro rata share of the additional costs by the state agencies that conduct administrative hearings.

11435.50. The State Personnel Board may remove the name of a person from the list of certified interpreters if any of the following conditions occurs:

(a) The person is deceased.

(b) The person notifies the board that the person is unavailable for work.

(c) The person does not submit a renewal fee as required by Section 11435.45.

11435.55. (a) An interpreter used in a hearing shall be certified pursuant to Section 11435.30. However, if an interpreter certified pursuant to Section 11435.30 cannot be present at the hearing, the hearing agency shall have discretionary authority to provisionally qualify and use another interpreter.

(b) An interpreter used in a medical examination shall be certified pursuant to Section 11435.35. However, if an interpreter certified pursuant to Section 11435.35 cannot be present at the medical examination, the physician provisionally may use another interpreter if that fact is noted in the record of the medical evaluation.

11435.60. Every agency subject to the language assistance requirement of this article shall advise each party of the right to an interpreter at the same time that each party is advised of the hearing date or medical examination. Each party in need of an interpreter shall also be encouraged to give timely notice to the agency conducting the hearing or medical examination so that appropriate arrangements can be made.

11435.65. (a) The rules of confidentiality of the agency, if any, that apply in an adjudicative proceeding shall apply to any interpreter in the hearing or medical examination, whether or not the rules so state.

(b) The interpreter shall not have had any involvement in the issues of the case prior to the hearing.

Article 9. General Procedural Provisions

11440.10. (a) The agency head may do any of the following with respect to a decision of the presiding officer or the agency:

(1) Determine to review some but not all issues, or not to exercise any review.

(2) Delegate its review authority to one or more persons.

(3) Authorize review by one or more persons, subject to further review by the agency head.

(b) By regulation an agency may mandate review, or may preclude or limit review, of a decision of the presiding officer or the agency.

11440.20. Service of a writing on, or giving of a notice to, a person in a procedure provided in this chapter is subject to the following provisions:

(a) The writing or notice shall be delivered personally or sent by mail or other means to the person at the person's last known address or, if the person is a party with an attorney or other authorized representative of record in the proceeding, to the party's attorney or other authorized representative. If a party is required by statute or regulation to maintain an address with an agency, the party's last known address is the address maintained with the agency.

(b) Unless a provision specifies the form of mail, service or notice by mail may be by first-class mail, registered mail, or certified mail, by mail delivery service, by facsimile transmission if complete and without error, or by other electronic means as provided by regulation, in the discretion of the sender.

11440.30. (a) The presiding officer may conduct all or part of a hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits.

(b) The presiding officer may not conduct all or part of a hearing by telephone, television, or other electronic means if a party objects.

11440.40. (a) In any proceeding under subdivision (h) or (i) of Section 12940, or Section 19572 or 19702, alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is subject to all of the following limitations:

(1) The evidence is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (b). This paragraph is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed by statute.

(2) The evidence is not admissible at the hearing unless offered to attack the credibility of the complainant as provided for under subdivision (b). Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

(b) Evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is presumed inadmissible absent an offer of proof establishing its relevance and reliability and that its probative value is not substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or confuse the issue.

(c) As used in this section "complainant" means a person claiming to have been subjected to conduct that constitutes sexual harassment, sexual assault, or sexual battery.

11440.50. (a) This section applies in adjudicative proceedings of an agency if the agency by regulation provides that this section is applicable in the proceedings.

(b) The presiding officer shall grant a motion for intervention if all of the following conditions are satisfied:

(1) The motion is submitted in writing, with copies served on all parties named in the agency's pleading.

(2) The motion is made as early as practicable in advance of the hearing. If there is a prehearing conference, the motion shall be made in advance of the prehearing conference and shall be resolved at the prehearing conference.

(3) The motion states facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding or that the applicant qualifies as an intervenor under a statute or regulation.

(4) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(c) If an applicant qualifies for intervention, the presiding officer may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a subsequent time. Conditions may include the following:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.

(2) Limiting or excluding the use of discovery, cross-examination, and other procedures involving the intervenor so as to promote the orderly and prompt conduct of the proceeding.

(3) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Limiting or excluding the intervenor's participation in settlement negotiations.

(d) As early as practicable in advance of the hearing the presiding officer shall issue an order granting or denying the motion for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of an order granting, denying, or modifying intervention to the applicant and to all parties.

(e) Whether the interests of justice and the orderly and prompt conduct of the proceedings will be impaired by allowing intervention is a determination to be made in the sole discretion, and based on the knowledge and judgment at that time, of the presiding officer. The determination is not subject to administrative or judicial review.

(f) Nothing in this section precludes an agency from adopting a regulation that permits participation by a person short of intervention as a party, subject to Article 7 (commencing with Section 11430.10) of Chapter 4.5.

Article 10. Informal Hearing

11445.10. (a) Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the informal hearing procedure provided in this article.

(b) The Legislature finds and declares the following:

(1) The informal hearing procedure is intended to satisfy due process and public policy requirements in a manner that is simpler

and more expeditious than hearing procedures otherwise required by statute, for use in appropriate circumstances.

(2) The informal hearing procedure provides a forum in the nature of a conference in which a party has an opportunity to be heard by the presiding officer.

(3) The informal hearing procedure provides a forum that may accommodate a hearing where by regulation or statute a member of the public may participate without appearing or intervening as a party.

11445.20. Subject to Section 11445.30, an agency may use an informal hearing procedure in any of the following proceedings, if in the circumstances its use does not violate another statute or the federal or state Constitution:

(a) A proceeding where there is no disputed issue of material fact.

(b) A proceeding where there is a disputed issue of material fact, if the matter is limited to any of the following:

(1) A monetary amount of not more than one thousand dollars ($1,000).

(2) A disciplinary sanction against a student that does not involve expulsion from an academic institution or suspension for more than 10 days.

(3) A disciplinary sanction against an employee that does not involve discharge from employment, demotion, or suspension for more than 5 days.

(4) A disciplinary sanction against a licensee that does not involve an actual revocation of a license or an actual suspension of a license for more than five days. Nothing in this section precludes an agency from imposing a stayed revocation or a stayed suspension of a license in an informal hearing.

(c) A proceeding where, by regulation, the agency has authorized use of an informal hearing.

(d) A proceeding where an evidentiary hearing for determination of facts is not required by statute but where the agency determines the federal or state Constitution may require a hearing.

11445.30. (a) The notice of hearing shall state the agency's selection of the informal hearing procedure.

(b) Any objection of a party to use of the informal hearing procedure shall be made in the party's pleading.

(c) An objection to use of the informal hearing procedure shall be resolved by the presiding officer before the hearing on the basis of the pleadings and any written submissions in support of the pleadings. An objection to use of the informal hearing procedure in a disciplinary proceeding involving an occupational license shall be resolved in favor of the licensee.

11445.40. (a) Except as provided in this article, the hearing procedures otherwise required by statute for an adjudicative proceeding apply to an informal hearing.

(b) In an informal hearing the presiding officer shall regulate the course of the proceeding. The presiding officer shall permit the parties and may permit others to offer written or oral comments on the issues. The presiding officer may limit the use of witnesses, testimony, evidence, and argument, and may limit or eliminate the use of pleadings, intervention, discovery, prehearing conferences, and rebuttal.

11445.50. (a) The presiding officer may deny use of the informal hearing procedure, or may convert an informal hearing to a formal hearing after an informal hearing is commenced, if it appears to the presiding officer that cross-examination is necessary for proper determination of the matter and that the delay, burden, or complication due to allowing cross-examination in the informal hearing will be more than minimal.

(b) An agency, by regulation, may specify categories of cases in which cross-examination is deemed not necessary for proper determination of the matter under the informal hearing procedure. The presiding officer may allow cross-examination of witnesses in an informal hearing notwithstanding an agency regulation if it appears to the presiding officer that in the circumstances cross-examination is necessary for proper determination of the matter.

(c) The actions of the presiding officer under this section are not subject to judicial review.

11445.60. (a) If the presiding officer has reason to believe that material facts are in dispute, the presiding officer may require a party to state the identity of the witnesses or other sources through which the party would propose to present proof if the proceeding were converted to a formal or other applicable hearing procedure. If disclosure of a fact, allegation, or source is privileged or expressly prohibited by a regulation, statute, or the federal or state Constitution, the presiding officer may require the party to indicate that confidential facts, allegations, or sources are involved, but not to disclose the confidential facts, allegations, or sources.

(b) If a party has reason to believe that essential facts must be obtained in order to permit an adequate presentation of the case, the party may inform the presiding officer regarding the general nature of the facts and the sources from which the party would propose to obtain the facts if the proceeding were converted to a formal or other applicable hearing procedure.

Article 11. Subpoenas

11450.05. (a) This article applies in an adjudicative proceeding required to be conducted under Chapter 5 (commencing with Section 11500).

(b) An agency may use the subpoena procedure provided in this article in an adjudicative proceeding not required to be conducted under Chapter 5 (commencing with Section 11500), in which case all

the provisions of this article apply including, but not limited to, issuance of a subpoena at the request of a party or by the attorney of record for a party under Section 11450.20.

11450.10. (a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for production of documents at any reasonable time and place or at a hearing.

(b) The custodian of documents that are the subject of a subpoena duces tecum may satisfy the subpoena by delivery of the documents or a copy of the documents, or by making the documents available for inspection or copying, together with an affidavit in compliance with Section 1561 of the Evidence Code.

11450.20. (a) Subpoenas and subpoenas duces tecum shall be issued by the agency or presiding officer at the request of a party, or by the attorney of record for a party, in accordance with Sections 1985 to 1985.4, inclusive, of the Code of Civil Procedure.

(b) The process extends to all parts of the state and shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure. A subpoena or subpoena duces tecum may also be delivered by certified mail return receipt requested or by messenger. Service by messenger shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, or in person, and identifies himself or herself either by reference to date of birth and driver's license number or Department of Motor Vehicles identification number, or the sender may verify receipt of the subpoena by obtaining other identifying information from the recipient. The sender shall make a written notation of the acknowledgment. A subpoena issued and acknowledged pursuant to this section has the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may so state. A party requesting a continuance based upon the failure of a witness to appear at the time and place required for the appearance or testimony pursuant to a subpoena, shall prove that the party has complied with this section. The continuance shall only be granted for a period of time that would allow personal service of the subpoena and in no event longer than that allowed by law.

(c) No witness is obliged to attend unless the witness is a resident of the state at the time of service.

11450.30. (a) A person served with a subpoena or a subpoena duces tecum may object to its terms by a motion for a protective order, including a motion to quash.

(b) The objection shall be resolved by the presiding officer on terms and conditions that the presiding officer declares. The presiding officer may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

(c) A subpoena or a subpoena duces tecum issued by the agency on its own motion may be quashed by the agency.

11450.40. A witness appearing pursuant to a subpoena or a subpoena duces tecum, other than a party, shall receive for the appearance the following mileage and fees, to be paid by the party at whose request the witness is subpoenaed:

(a) The same mileage allowed by law to a witness in a civil case.

(b) The same fees allowed by law to a witness in a civil case. This subdivision does not apply to an officer or employee of the state or a political subdivision of the state.

11450.50. (a) In the case of the production of a party to the record of a proceeding or of a person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena on the witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the attorney of the party or person.

(b) Service of written notice to attend under this section shall be made in the manner and is subject to the conditions provided in Section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

Article 12. Enforcement of Orders and Sanctions

11455.10. A person is subject to the contempt sanction for any of the following in an adjudicative proceeding before an agency:

(a) Disobedience of or resistance to a lawful order.

(b) Refusal to take the oath or affirmation as a witness or thereafter refusal to be examined.

(c) Obstruction or interruption of the due course of the proceeding during a hearing or near the place of the hearing by any of the following:

(1) Disorderly, contemptuous, or insolent behavior toward the presiding officer while conducting the proceeding.

(2) Breach of the peace, boisterous conduct, or violent disturbance.

(3) Other unlawful interference with the process or proceedings of the agency.

(d) Violation of the prohibition of ex parte communications under Article 7 (commencing with Section 11430.10).

(e) Failure or refusal, without substantial justification, to comply with a deposition order, discovery request, subpoena, or other order of the presiding officer, or moving, without substantial justification, to compel discovery.

11455.20. (a) The presiding officer or agency head may certify the facts that justify the contempt sanction against a person to the superior court in and for the county where the proceeding is conducted. The court shall thereupon issue an order directing the person to appear before the court at a specified time and place, and then and there to show cause why the person should not be punished for contempt. The order and a copy of the certified statement shall

be served on the person. Upon service of the order and a copy of the certified statement, the court has jurisdiction of the matter.

(b) The same proceedings shall be had, the same penalties may be imposed, and the person charged may purge the contempt in the same way, as in the case of a person who has committed a contempt in the trial of a civil action before a superior court.

11455.30. (a) The presiding officer may order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in Section 128.5 of the Code of Civil Procedure.

(b) The order, or denial of an order, is subject to judicial review in the same manner as a decision in the proceeding. The order is enforceable in the same manner as a money judgment or by the contempt sanction.

Article 13. Emergency Decision

11460.10. Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the emergency decision procedure provided in this article.

11460.20. (a) An agency may issue an emergency decision for temporary, interim relief under this article if the agency has adopted a regulation that provides that the agency may use the procedure provided in this article.

(b) The regulation shall elaborate the application of the provisions of this article to an emergency decision by the agency, including all of the following:

(1) Define the specific circumstances in which an emergency decision may be issued under this article.

(2) State the nature of the temporary, interim relief that the agency may order.

(3) Prescribe the procedures that will be available before and after issuance of an emergency decision under this article. The procedures may be more protective of the person to which the agency action is directed than those provided in this article.

(c) This article does not apply to an emergency decision, including a cease and desist order or an interim or temporary suspension order, issued pursuant to other express statutory authority.

11460.30. (a) An agency may only issue an emergency decision under this article in a situation involving an immediate danger to the public health, safety, or welfare that requires immediate agency action.

(b) An agency may only take action under this article that is necessary to prevent or avoid the immediate danger to the public

health, safety, or welfare that justifies issuance of an emergency decision.

(c) An emergency decision issued under this article is limited to temporary, interim relief. The temporary, interim relief is subject to judicial review under Section 11460.80, and the underlying issue giving rise to the temporary, interim relief is subject to an adjudicative proceeding pursuant to Section 11460.60.

11460.40. (a) Before issuing an emergency decision under this article, the agency shall, if practicable, give the person to which the agency action is directed notice and an opportunity to be heard.

(b) Notice and hearing under this section may be oral or written, including notice and hearing by telephone, facsimile transmission, or other electronic means, as the circumstances permit. The hearing may be conducted in the same manner as an informal hearing.

11460.50. (a) The agency shall issue an emergency decision, including a brief explanation of the factual and legal basis and reasons for the emergency decision, to justify the determination of an immediate danger and the agency's emergency decision to take the specific action.

(b) The agency shall give notice to the extent practicable to the person to which the agency action is directed. The emergency decision is effective when issued or as provided in the decision.

11460.60. (a) After issuing an emergency decision under this article for temporary, interim relief, the agency shall conduct an adjudicative proceeding under a formal, informal, or other applicable hearing procedure to resolve the underlying issues giving rise to the temporary, interim relief.

(b) The agency shall commence an adjudicative proceeding under another procedure within 10 days after issuing an emergency decision under this article, notwithstanding the pendency of proceedings for judicial review of the emergency decision.

11460.70. The agency record consists of any documents concerning the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

11460.80. (a) On issuance of an emergency decision under this article, the person to which the agency action is directed may obtain judicial review of the decision in the manner provided in this section without exhaustion of administrative remedies.

(b) Judicial review under this section shall be pursuant to Section 1094.5 of the Code of Civil Procedure, subject to the following provisions:

(1) The hearing shall be on the earliest day that the business of the court will admit of, but not later than 15 days after service of the petition on the agency.

(2) Where it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines

that the findings are not supported by substantial evidence in the light of the whole record.

(3) A party, on written request to another party, before the proceedings for review and within 10 days after issuance of the emergency decision, is entitled to appropriate discovery.

(4) The relief that may be ordered on judicial review is limited to a stay of the emergency decision.

Article 14. Declaratory Decision

11465.10. Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the declaratory decision procedure provided in this article.

11465.20. (a) A person may apply to an agency for a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the agency.

(b) The agency in its discretion may issue a declaratory decision in response to the application. The agency shall not issue a declaratory decision if any of the following applies:

(1) Issuance of the decision would be contrary to a regulation adopted under this article.

(2) The decision would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory decision proceeding.

(3) The decision involves a matter that is the subject of pending administrative or judicial proceedings.

(c) An application for a declaratory decision is not required for exhaustion of the applicant's administrative remedies for purposes of judicial review.

11465.30. Within 30 days after receipt of an application for a declaratory decision, an agency shall give notice of the application to all persons to which notice of an adjudicative proceeding is otherwise required, and may give notice to any other person.

11465.40. The provisions of a formal, informal, or other applicable hearing procedure do not apply to an agency proceeding for a declaratory decision except to the extent provided in this article or to the extent the agency so provides by regulation or order.

11465.50. (a) Within 60 days after receipt of an application for a declaratory decision, an agency shall do one of the following, in writing:

(1) Issue a decision declaring the applicability of the statute, regulation, or decision in question to the specified circumstances.

(2) Set the matter for specified proceedings.

(3) Agree to issue a declaratory decision by a specified time.

(4) Decline to issue a declaratory decision, stating in writing the reasons for its action. Agency action under this paragraph is not subject to judicial review.

(b) A copy of the agency's action under subdivision (a) shall be served promptly on the applicant and any other party.

(c) If an agency has not taken action under subdivision (a) within 60 days after receipt of an application for a declaratory decision, the agency is considered to have declined to issue a declaratory decision on the matter.

11465.60. (a) A declaratory decision shall contain the names of all parties to the proceeding, the particular facts on which it is based, and the reasons for its conclusion.

(b) A declaratory decision has the same status and binding effect as any other decision issued by the agency in an adjudicative proceeding.

11465.70. (a) The Office of Administrative Hearings shall adopt and promulgate model regulations under this article that are consistent with the public interest and with the general policy of this article to facilitate and encourage agency issuance of reliable advice. The model regulations shall provide for all of the following:

(1) A description of the classes of circumstances in which an agency will not issue a declaratory decision.

(2) The form, contents, and filing of an application for a declaratory decision.

(3) The procedural rights of a person in relation to an application.

(4) The disposition of an application.

(b) The regulations adopted by the Office of Administrative Hearings under this article apply in an adjudicative proceeding unless an agency adopts its own regulations to govern declaratory decisions of the agency.

(c) This article does not apply in an adjudicative proceeding to the extent an agency by regulation provides inconsistent rules or provides that this article is not applicable in a proceeding of the agency.

Article 15. Conversion of Proceeding

11470.10. (a) Subject to any applicable regulation adopted under Section 11470.50, at any point in an agency proceeding the presiding officer or other agency official responsible for the proceeding:

(1) May convert the proceeding to another type of agency proceeding provided for by statute if the conversion is appropriate, is in the public interest, and does not substantially prejudice the rights of a party.

(2) Shall convert the proceeding to another type of agency proceeding provided for by statute, if required by regulation or statute.

(b) A proceeding of one type may be converted to a proceeding of another type only on notice to all parties to the original proceeding.

11470.20. If the presiding officer or other agency official responsible for the original proceeding would not have authority

over the new proceeding to which it is to be converted, the agency head shall appoint a successor to preside over or be responsible for the new proceeding.

11470.30. To the extent practicable and consistent with the rights of parties and the requirements of this article relating to the new proceeding, the record of the original agency proceeding shall be used in the new agency proceeding.

11470.40. After a proceeding is converted from one type to another, the presiding officer or other agency official responsible for the new proceeding shall do all of the following:

(a) Give additional notice to parties or other persons necessary to satisfy the statutory requirements relating to the new proceeding.

(b) Dispose of the matters involved without further proceedings if sufficient proceedings have already been held to satisfy the statutory requirements relating to the new proceeding.

(c) Conduct or cause to be conducted any additional proceedings necessary to satisfy the statutory requirements relating to the new proceeding, and allow the parties a reasonable time to prepare for the new proceeding.

11470.50. An agency may adopt regulations to govern the conversion of one type of proceeding to another. The regulations may include an enumeration of the factors to be considered in determining whether and under what circumstances one type of proceeding will be converted to another.

SEC. 22. The heading of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is amended to read:

CHAPTER 5. ADMINISTRATIVE ADJUDICATION: FORMAL HEARING

SEC. 23. Section 11500 of the Government Code is amended to read:

11500. In this chapter unless the context or subject matter otherwise requires:

(a) "Agency" includes the state boards, commissions, and officers to which this chapter is made applicable by law, except that wherever the word "agency" alone is used the power to act may be delegated by the agency, and wherever the words "agency itself" are used the power to act shall not be delegated unless the statutes relating to the particular agency authorize the delegation of the agency's power to hear and decide.

(b) "Party" includes the agency, the respondent, and any person, other than an officer or an employee of the agency in his or her official capacity, who has been allowed to appear or participate in the proceeding.

(c) "Respondent" means any person against whom an accusation is filed pursuant to Section 11503 or against whom a statement of issues is filed pursuant to Section 11504.

(d) "Administrative law judge" means an individual qualified under Section 11502.

(e) "Agency member" means any person who is a member of any agency to which this chapter is applicable and includes any person who himself or herself constitutes an agency.

SEC. 24. Section 11501 of the Government Code is amended to read:

11501. (a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) The enumerated agencies referred to in Section 11500 are:

(1) Accountancy, State Board of
(2) Air Resources Board, State
(3) Alcohol and Drug Programs, State Department of
(4) Architectural Examiners, California Board of
(5) Attorney General
(6) Auctioneer Commission, Board of Governors of
(7) Automotive Repair, Bureau of
(8) Barbering and Cosmetology, State Board of
(9) Behavioral Science Examiners, Board of
(10) Boating and Waterways, Department of
(11) Cancer Advisory Council
(12) Cemetery Board
(13) Chiropractic Examiners, Board of
(14) Security and Investigative Services, Bureau of
(15) Community Colleges, Board of Governors of the California
(16) Conservation, Department of
(17) Consumer Affairs, Department of
(18) Contractors, State License Board
(19) Corporations, Commissioner of
(20) Court Reporters Board of California
(21) Dental Examiners of California, Board of
(22) Education, State Department of
(23) Electronic and Appliance Repair, Bureau of
(24) Engineers and Land Surveyors, State Board of Registration for Professional
(25) Fair Political Practices Commission
(26) Fire Marshal, State
(27) Food and Agriculture, Director of
(28) Forestry and Fire Protection, Department of
(29) Funeral Directors and Embalmers, State Board of
(30) Geologists and Geophysicists, State Board of Registration for
(31) Guide Dogs for the Blind, State Board of
(32) Health Services, State Department of
(33) Highway Patrol, Department of the California
(34) Home Furnishings and Thermal Insulation, Bureau of
(35) Horse Racing Board, California
(36) Housing and Community Development, Department of
(37) Insurance Commissioner

(38) Labor Commissioner
(39) Landscape Architects, State Board of
(40) Medical Board of California, Medical Quality Review Committees and Examining Committees
(41) Motor Vehicles, Department of
(42) Nursing, Board of Registered
(43) Nursing Home Administrators, Board of Examiners of
(44) Optometry, State Board of
(45) Osteopathic Medical Board of California
(46) Pharmacy, California State Board of
(47) Podiatric Medicine, Board of
(48) Psychology, Board of
(49) Public Employees' Retirement System, Board of Administration of the
(50) Real Estate, Department of
(51) San Francisco, San Pablo and Suisun, Board of Pilot Commissioners for the Bays of
(52) Savings and Loan Commissioner
(53) School Districts
(54) Secretary of State, Office of
(55) Social Services, State Department of
(56) Statewide Health Planning and Development, Office of
(57) Structural Pest Control Board
(58) Tax Preparers Program
(59) Teacher Credentialing, Commission on
(60) Teachers' Retirement System, State
(61) Transportation, Department of, acting pursuant to the State Aeronautics Act
(62) Veterinary Medical Board
(63) Vocational Nurse and Psychiatric Technician Examiners of the State of California, Board of

(c) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 24.5. Section 11501 is added to the Government Code, to read:

11501. (a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) This chapter applies to an adjudicative proceeding of an agency created on or after July 1, 1997, unless the statutes relating to the proceeding provide otherwise.

(c) Chapter 4.5 (commencing with Section 11400) applies to an adjudicative proceeding required to be conducted under this chapter, unless the statutes relating to the proceeding provide otherwise.

SEC. 25. Section 11501.5 of the Government Code is repealed.

SEC. 26. Section 11502 of the Government Code is amended to read:

11502. (a) All hearings of state agencies required to be conducted under this chapter shall be conducted by administrative law judges on the staff of the Office of Administrative Hearings. This subdivision applies to a hearing required to be conducted under this chapter that is conducted under the informal hearing or emergency decision procedure provided in Chapter 4.5 (commencing with Section 11400).

(b) The Director of the Office of Administrative Hearings has power to appoint a staff of administrative law judges for the office as provided in Section 11370.3. Each administrative law judge shall have been admitted to practice law in this state for at least five years immediately preceding his or her appointment and shall possess any additional qualifications established by the State Personnel Board for the particular class of position involved.

SEC. 27. Section 11502.1 of the Government Code is repealed.

SEC. 28. Section 11505 of the Government Code is amended to read:

11505. (a) Upon the filing of the accusation the agency shall serve a copy thereof on the respondent as provided in subdivision (c). The agency may include with the accusation any information which it deems appropriate, but it shall include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506. The copy of the accusation shall include or be accompanied by (1) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (2) copies of Sections 11507.5, 11507.6, and 11507.7.

(b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to: (here insert name and address of agency). You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section

11507.6 of the Government Code in the possession, custody or control of the agency, you may contact: (here insert name and address of appropriate person).

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the agency or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 days will deprive you of a postponement.

(c) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. But no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires the respondent to file the respondent's address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to the respondent at the latest address on file with the agency.

SEC. 29. Section 11506 of the Government Code is amended to read:

11506. (a) Within 15 days after service of the accusation the respondent may file with the agency a notice of defense in which the respondent may:

(1) Request a hearing.

(2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.

(3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense.

(4) Admit the accusation in whole or in part.

(5) Present new matter by way of defense.

(6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

(b) Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided

in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.

(d) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

SEC. 30. Section 11507.3 is added to the Government Code, to read:

11507.3. (a) When proceedings that involve a common question of law or fact are pending, the administrative law judge on the judge's own motion or on motion of a party may order a joint hearing of any or all the matters at issue in the proceedings. The administrative law judge may order all the proceedings consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

SEC. 31. Section 11507.6 of the Government Code is amended to read:

11507.6. After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SEC. 32. Section 11507.7 of the Government Code is amended to read:

11507.7. (a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with

it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

SEC. 33. Section 11508 of the Government Code is amended to read:

11508. (a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of hearing. The hearing shall be held in Oakland if the transaction occurred or the respondent resides within the First or Sixth Appellate District, in the County of Los Angeles if the transaction occurred or the respondent resides within the Second or Fourth Appellate District other than the County of Imperial or San Diego, in the County of Sacramento if the transaction occurred or the respondent resides within the Third or Fifth Appellate District, and in the County of San Diego if the transaction occurred or the respondent resides within the Fourth Appellate District in the County of Imperial or San Diego.

(b) Notwithstanding subdivision (a):

(1) If the transaction occurred in a district other than that of respondent's residence, the agency may select the county appropriate for either district.

(2) The agency may select a different place nearer the place where the transaction occurred or the respondent resides.

(3) The parties by agreement may select any place within the state.

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent.

SEC. 34. Section 11509 of the Government Code is amended to read:

11509. The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense.

The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before [here insert name of agency] at [here insert place of hearing] on the _____ day of _____, 19____, at the hour of _____, upon the charges made in the accusation served upon you. If you object to the place of hearing, you must notify the presiding officer within 10 days after this notice is served on you. Failure to notify the presiding officer within 10 days will deprive you of a change in the place of the hearing. You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to [here insert appropriate office of agency].

SEC. 35. Section 11510 of the Government Code is repealed.

SEC. 36. Section 11511 of the Government Code is amended to read:

11511. On verified petition of any party, an administrative law judge or, if an administrative law judge has not been appointed, an agency may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or can not be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. The petitioner shall serve notice of hearing and a copy of the petition on the other parties at least 10 days before the hearing. Where the witness resides outside the state and where the administrative law judge or agency has ordered the taking of the testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189.

SEC. 37. Section 11511.5 of the Government Code is amended to read:

11511.5. (a) On motion of a party or by order of an administrative law judge, the administrative law judge may conduct a prehearing conference. The administrative law judge shall set the time and place for the prehearing conference, and shall give reasonable written notice to all parties.

(b) The prehearing conference may deal with one or more of the following matters:

(1) Exploration of settlement possibilities.

(2) Preparation of stipulations.

(3) Clarification of issues.

(4) Rulings on identity and limitation of the number of witnesses.

(5) Objections to proffers of evidence.

(6) Order of presentation of evidence and cross-examination.

(7) Rulings regarding issuance of subpoenas and protective orders.

(8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.

(9) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.

(10) Motions for intervention.

(11) Exploration of the possibility of using alternative dispute resolution provided in Article 5 (commencing with Section 11420.10) of, or the informal hearing procedure provided in Article 10 (commencing with Section 11445.10) of, Chapter 4.5, and objections to use of the informal hearing procedure. Use of alternative dispute resolution or of the informal hearing procedure is subject to subdivision (d).

(12) Any other matters as shall promote the orderly and prompt conduct of the hearing.

(c) The administrative law judge may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

(d) With the consent of the parties, the prehearing conference may be converted immediately into alternative dispute resolution or an informal hearing. With the consent of the parties, the proceeding may be converted into alternative dispute resolution to be conducted at another time. With the consent of the agency, the proceeding may be converted into an informal hearing to be conducted at another time subject to the right of a party to object to use of the informal hearing procedure as provided in Section 11445.30.

(e) The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference. The administrative law judge may direct one or more of the parties to prepare a prehearing order.

SEC. 38. Section 11511.7 is added to the Government Code, to read:

11511.7. (a) The administrative law judge may order the parties to attend and participate in a settlement conference. The administrative law judge shall set the time and place for the settlement conference, and shall give reasonable written notice to all parties.

(b) The administrative law judge at the settlement conference shall not preside as administrative law judge at the hearing unless otherwise stipulated by the parties. The administrative law judge may conduct all or part of the settlement conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

SEC. 39. Section 11512 of the Government Code is amended to read:

11512. (a) Every hearing in a contested case shall be presided over by an administrative law judge. The agency itself shall determine whether the administrative law judge is to hear the case alone or whether the agency itself is to hear the case with the administrative law judge.

(b) When the agency itself hears the case, the administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the administrative law judge alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A ruling of the administrative law judge admitting or excluding evidence is subject to review in the same manner and to the same extent as the administrative law judge's proposed decision in the proceeding.

(c) An administrative law judge or agency member shall voluntarily disqualify himself or herself and withdraw from any case in which there are grounds for disqualification, including disqualification under Section 11425.40. The parties may waive the disqualification by a writing that recites the grounds for disqualification. A waiver is effective only when signed by all parties, accepted by the administrative law judge or agency member, and included in the record. Any party may request the disqualification of any administrative law judge or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the administrative law judge or agency member is disqualified. Where the request concerns an agency member, the issue shall be determined by the other members of the agency. Where the request concerns the administrative law judge, the issue shall be determined by the agency itself if the agency itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge. No agency member shall withdraw voluntarily or be subject to disqualification if his or her disqualification would prevent the existence of a quorum qualified to act in the particular case, except that a substitute qualified to act may be appointed by the appointing authority.

(d) The proceedings at the hearing shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically.

(e) Whenever, after the agency itself has commenced to hear the case with an administrative law judge presiding, a quorum no longer exists, the administrative law judge who is presiding shall complete the hearing as if sitting alone and shall render a proposed decision in accordance with subdivision (b) of Section 11517.

SEC. 40. Section 11513 of the Government Code is amended to read:

11513. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(f) The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

SEC. 41. Section 11513.5 of the Government Code is repealed.

SEC. 42. Section 11517 of the Government Code is amended to read:

11517. (a) If a contested case is heard before an agency itself, all of the following provisions apply:

(1) The administrative law judge who presided at the hearing shall be present during the consideration of the case and, if requested, shall assist and advise the agency.

(2) No member thereof who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(b) If a contested case is heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted a proposed decision in a form that may be adopted as the decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after receipt of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency. The agency itself may do any of the following:

(1) Adopt the proposed decision in its entirety.

(2) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(3) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(c) If the proposed decision is not adopted as provided in subdivision (b), the agency itself may decide the case upon the record, including the transcript, or an agreed statement of the parties, with or without taking additional evidence, or may refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the case is assigned to an administrative law judge he or she shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of the proposed decision shall be furnished to each party and his or her attorney as prescribed in subdivision (b). The agency itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence. The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

(d) The proposed decision shall be deemed adopted by the agency 100 days after delivery to the agency by the Office of Administrative Hearings, unless within that time (i) the agency notifies the parties that the proposed decision is not adopted as provided in subdivision

(b) and commences proceedings to decide the case upon the record, including the transcript, or without the transcript where the parties have so stipulated, or (ii) the agency refers the case to the administrative law judge to take additional evidence. In a case where the agency commences proceedings to decide the case upon the record and has ordered a transcript of the proceedings, the 100-day period shall begin upon delivery of the transcript. If the agency finds that a further delay is required by special circumstances, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.

(e) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

SEC. 43. Section 11518 of the Government Code is amended to read:

11518. Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

SEC. 44. Section 11518.5 is added to the Government Code, to read:

11518.5. (a) Within 15 days after service of a copy of the decision on a party, but not later than the effective date of the decision, the party may apply to the agency for correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made. Notice of the application shall be given to the other parties to the proceeding. The application is not a prerequisite for seeking judicial review.

(b) The agency may refer the application to the administrative law judge who formulated the proposed decision or may delegate its authority under this section to one or more persons.

(c) The agency may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. The application is considered denied if the agency does not dispose of it within 15 days after it is made or a longer time that the agency provides by regulation.

(d) Nothing in this section precludes the agency, on its own motion or on motion of the administrative law judge, from modifying the decision to correct a mistake or clerical error. A modification under this subdivision shall be made within 15 days after issuance of the decision.

(e) The agency shall, within 15 days after correction of a mistake or clerical error in the decision, serve a copy of the correction on each party on which a copy of the decision was previously served.

SEC. 45. Section 11519 of the Government Code is amended to read:

11519. (a) The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is

ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.

(b) A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

(c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to the officer after the decision has become effective.

(d) As used in subdivision (b), specified terms of probation may include an order of restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.

(e) The person to which the agency action is directed may not be required to comply with a decision unless the person has been served with the decision in the manner provided in Section 11505 or has actual knowledge of the decision.

(f) A nonparty may not be required to comply with a decision unless the agency has made the decision available for public inspection and copying or the nonparty has actual knowledge of the decision.

(g) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with Article 13 (commencing with Section 11460.10) of Chapter 4.5.

SEC. 46. Section 11520 of the Government Code is amended to read:

11520. (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

(b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a

written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

(1) Failure of the person to receive notice served pursuant to Section 11505.

(2) Mistake, inadvertence, surprise, or excusable neglect.

SEC. 47. Section 11523 of the Government Code is amended to read:

11523. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the fee specified in Section 69950 for the transcript, the cost of preparation of other portions of the record and for certification thereof. Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. In the event that the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

SEC. 48. Section 11524 of the Government Code is amended to read:

11524. (a) The agency may grant continuances. When an administrative law judge of the Office of Administrative Hearings has been assigned to the hearing, no continuance may be granted except by him or her or by the presiding judge of the appropriate regional office of the Office of Administrative Hearings, for good cause shown.

(b) When seeking a continuance, a party shall apply for the continuance within 10 working days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the 10 working days have lapsed if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause.

(c) In the event that an application for a continuance by a party is denied by an administrative law judge of the Office of Administrative Hearings, and the party seeks judicial review thereof, the party shall, within 10 working days of the denial, make application for appropriate judicial relief in the superior court or be barred from judicial review thereof as a matter of jurisdiction. A party applying for judicial relief from the denial shall give notice to the agency and other parties. Notwithstanding Section 1010 of the Code of Civil Procedure, the notice may be either oral at the time of the denial of application for a continuance or written at the same time application is made in court for judicial relief. This subdivision does not apply to the Department of Alcoholic Beverage Control.

SEC. 49. Section 11525 of the Government Code is repealed.

SEC. 50. Section 11526 of the Government Code is amended to read:

11526. The members of an agency qualified to vote on any question may vote by mail or another appropriate method.

SEC. 51. Section 11529 of the Government Code is amended to read:

11529. (a) The administrative law judge of the Medical Quality Hearing Panel established pursuant to Section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

(b) All orders authorized by this section shall be issued only after a hearing conducted pursuant to subdivision (d), unless it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice. Except as provided in subdivision (c), the licensee shall receive at least 15 days'

prior notice of the hearing, which notice shall include affidavits and all other information in support of the order.

(c) If an interim order is issued without notice, the administrative law judge who issued the order without notice shall cause the licensee to be notified of the order, including affidavits and all other information in support of the order by a 24-hour delivery service. That notice shall also include the date of the hearing on the order, which shall be conducted in accordance with the requirement of subdivision (d), not later than 20 days from the date of issuance. The order shall be dissolved unless the requirements of subdivision (a) are satisfied.

(d) For the purposes of the hearing conducted pursuant to this section, the licentiate shall, at a minimum, have the following rights:

(1) To be represented by counsel.

(2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the record.

(3) To present written evidence in the form of relevant declarations, affidavits, and documents.

The discretion of the administrative law judge to permit testimony at the hearing conducted pursuant to this section shall be identical to the discretion of a superior court judge to permit testimony at a hearing conducted pursuant to Section 527 of the Code of Civil Procedure.

(4) To present oral argument.

(e) Consistent with the burden and standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall grant the interim order where, in the exercise of discretion, the administrative law judge concludes that:

(1) There is a reasonable probability that the petitioner will prevail in the underlying action.

(2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

(f) In all cases where an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 15 days of the date in which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved.

Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date that matter is submitted, or the board shall nullify the interim order previously issued, unless good cause can be shown by the Division of Medical Quality for a delay.

(g) Where an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the administrative law judge, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(h) Notwithstanding the fact that interim orders issued pursuant to this section are not issued after a hearing as otherwise required by this chapter, interim orders so issued shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure. The relief which may be ordered shall be limited to a stay of the interim order. Interim orders issued pursuant to this section are final interim orders and, if not dissolved pursuant to subdivision (c) or (f), may only be challenged administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be:

(1) In addition to, and not a limitation on, the authority to seek injunctive relief provided for in the Business and Professions Code.

(2) A limitation on the emergency decision procedure provided in Article 13 (commencing with Section 11460.10) of Chapter 4.5.

SEC. 52. Section 11530 of the Government Code is repealed.

SEC. 53. Section 12935 of the Government Code is amended to read:

12935. The commission shall have the following functions, powers, and duties:

(a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards (1) to interpret, implement, and apply all provisions of this part, (2) to regulate the conduct of hearings held pursuant to Sections 12967 and 12980, and (3) to carry out all other functions and duties of the commission pursuant to this part.

(b) To conduct hearings pursuant to Sections 12967 and 12981.

(c) To establish and maintain a principal office within the state.

(d) To meet and function at any place within the state.

(e) To appoint an executive secretary, and any attorneys and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(f) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission.

(g) To create or provide financial or technical assistance to any advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment discrimination on the bases enumerated in this part or in specific instances of housing discrimination because of race, religious creed, color, national origin, ancestry, familial status, disability, marital status, or sex, and to foster, through community

effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of the state and to make recommendations to the commission for the development of policies and procedures in general. These advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

(h) With respect to findings and orders made pursuant to this part, to establish a system of published opinions which shall serve as precedent in interpreting and applying the provisions of this part. Commission findings, orders, and opinions in an adjudicative proceeding are subject to Section 11425.60.

(i) To issue publications and results of inquiries and research which in its judgment will tend to promote good will and minimize or eliminate unlawful discrimination. These publications shall include an annual report to the Governor and the Legislature of its activities and recommendations.

(j) Notwithstanding Sections 11370.3 and 11502, to appoint hearing officers, as it may deem necessary, to conduct hearings. Each hearing officer shall possess the qualifications established by the State Personnel Board for the particular class of position involved.

SEC. 54. Section 15609.5 is added to the Government Code, to read:

15609.5. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 do not apply to the board.

SEC. 55. Section 17533 is added to the Government Code, to read:

17533. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 does not apply to a hearing by the commission under this part.

SEC. 56. Section 19582.5 of the Government Code is amended to read:

19582.5. The board may designate certain of its decisions as precedents. Decisions of the board are subject to Section 11425.60. The board may provide by rule for the reconsideration of a previously issued decision to determine whether or not it shall be designated as a precedent decision. All decisions designated as precedents shall be published in a manner determined by the board.

SEC. 57. Section 21758 of the Government Code is amended to read:

21758. The board, in addition to its general rulemaking authority under Section 20120, may adopt regulations that implement this part. Those regulations shall be exempt from substantive review by the Office of Administrative Law, in particular from that office's review under Sections 11346.2, 11346.5, and 11346.9, subdivision (c) of Section 11346.8, subdivision (b) of Section 11347.3, and Sections 11349.1, 11349.2, 11349.3, and 11349.4. The board may adopt regulations which implement this part on an emergency basis,

without regard to the substantive review provisions set forth in subdivisions (a) to (c), inclusive, of Section 11349.6.

SEC. 57.5. Section 37624.2 of the Government Code is amended to read:

37624.2. The governing body or the hearing officer, if one is appointed, shall have the same power with respect to the issuance of subpoenas and subpoenas duces tecum as that granted to any agency or hearing officer pursuant to Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2. Any subpoena or subpoena duces tecum issued pursuant to this section shall have the same force and effect and impose the same obligations upon witnesses as that provided in Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2.

SEC. 58. Section 68560.5 of the Government Code is amended to read:

68560.5. As used in this article:

(a) "Court proceeding" means a civil, criminal, or juvenile proceeding, or a deposition in a civil case filed in a court of record. However, "court proceeding" does not include a small claims proceeding.

(b) "Interpreter" does not include (1) an interpreter qualified under Section 754 of the Evidence Code to interpret for deaf or hearing impaired persons, or (2) an interpreter qualified for administrative hearings or noncourt settings under Section 11513.

(c) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 58.5. Section 68560.5 is added to the Government Code, to read:

68560.5. As used in this article:

(a) "Court proceeding" means a civil, criminal, or juvenile proceeding, or a deposition in a civil case filed in a court of record. However, "court proceeding" does not include a small claims proceeding.

(b) "Interpreter" does not include (1) an interpreter qualified under Section 754 of the Evidence Code to interpret for deaf or hearing impaired persons, or (2) an interpreter qualified for administrative hearings or noncourt settings under Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2.

SEC. 59. Section 443.37 of the Health and Safety Code is amended to read:

443.37. (a) Any health facility affected by any determination made under this part by the office may petition the office for review of the decision. This petition shall be filed with the office within 15 business days, or within such greater time as the office, with the

advice of the commission, may allow, and shall specifically describe the matters which are disputed by the petitioner.

(b) A hearing shall be commenced within 60 calendar days of the date on which the petition was filed. The hearing shall be held before an employee of the office, an administrative law judge employed by the Office of Administrative Hearings, or a committee of the commission chosen by the chairperson for this purpose. If held before an employee of the office or a committee of the commission, the hearing shall be held in accordance with any procedures as the office, with the advice of the commission, shall prescribe. If held before an administrative law judge employed by the Office of Administrative Hearings, the hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The employee, administrative law judge, or committee shall prepare a recommended decision including findings of fact and conclusions of law and present it to the office for its adoption. The decision of the office shall be in writing and shall be final. The decision of the office shall be made within 60 calendar days after the conclusion of the hearing and shall be effective upon filing and service upon the petitioner.

(c) Judicial review of any final action, determination, or decision may be had by any party to the proceedings as provided in Section 1094.5 of the Code of Civil Procedure. The decision of the office shall be upheld against a claim that its findings are not supported by the evidence unless the court determines that the findings are not supported by substantial evidence.

(d) The employee of the office, the administrative law judge employed by the Office of Administrative Hearings, the Office of Administrative Hearings, or the committee of the commission, may issue subpoenas and subpoenas duces tecum in a manner and subject to the conditions established by Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 60. Section 1551.5 of the Health and Safety Code is amended to read:

1551.5. In addition to the witness fees and mileage provided by Section 11450.40 of the Government Code, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses in advance of the hearing.

SEC. 61. Section 1568.065 of the Health and Safety Code is amended to read:

1568.065. (a) Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all those powers granted by the provisions. In

the event of conflict between this chapter and those provisions of the Government Code, this chapter shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) If the license is not temporarily suspended pursuant to Section 1568.082, the hearing shall be held within 90 calendar days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of any of the following:

(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of that person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.

(4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.

(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

(d) In addition to the witness fees and mileage provided by Section 11450.40 of the Government Code, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state

employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

(e) (1) The withdrawal of an application for a license or a special permit after it has been filed with the department shall not deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license or a special permit upon any ground provided by law or to enter an order denying the license or special permit upon any ground provided by law.

(2) The suspension, expiration, or forfeiture by operation of law of a license issued by the department, or its suspension, forfeiture, or cancellation by order of the department or by order of a court of law, or its surrender, shall not deprive the department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any ground provided by law.

(f) (1) If an application for a license indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter 3.3 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for purposes of Section 1568.062, this section, or any other provision of law.

(2) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) and the application was denied within the last year, the department shall cease further review of the application under either of the following circumstances:

(A) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(B) In cases where the department informed the applicant of his or her right to petition for a hearing as specified in Section 1568.063 and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were

due to circumstances and conditions which either have been corrected or are no longer in existence.

SEC. 62. Section 1569.515 of the Health and Safety Code is amended to read:

1569.515. In addition to the witness fees and mileage provided by Section 11450.40 of the Government Code, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

SEC. 63. Section 1596.8875 of the Health and Safety Code is amended to read:

1596.8875. In addition to the witness fees and mileage provided by Section 11450.40 of the Government Code, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

SEC. 64. Section 11830 of the Health and Safety Code, as added by Chapter 1328 of the Statutes of 1984, is amended to read:

11830. In order to assure quality assurance of alcohol programs and expand the availability of funding resources, the department shall implement a program certification procedure for direct services funded under this part. The department, after consultation with the state advisory board, county alcohol program administrators, and other interested organizations and individuals, shall develop standards and regulations for the direct services describing the minimal level of service quality required of the service providers to qualify for and obtain state certification. The standards shall be voluntary until adopted as regulations, except that, notwithstanding Section 11340.5 of the Government Code, in order for a direct service provider to be eligible for funds pursuant to Section 1463.16 of the Penal Code, the provider shall have a valid certificate issued by the department under this chapter, whether or not the standards have been promulgated as regulations.

SEC. 64.4. Section 11830.5 of the Health and Safety Code is amended to read:

11830.5. The department, in consultation with the State Advisory Board, county alcohol and drug program administrators, and other interested organizations and individuals, shall develop program standards specific to each type of residential program, to be used during its certification process. These standards shall be advisory only and are excluded from the provisions of Section 11340.5 of the Government Code and other requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) and Chapter 8 (commencing with Section 11835).

The program standards shall include, but not be limited to, both of the following:

(a) Recognition and characterization of different approaches and solutions to the alcohol and drug problems that the department determines have sufficient merit for a separate standard.

(b) Reference to the needs of youth, the elderly, women, pregnant women, mothers and their children, gay, disabled, and minority populations, with recognition of innovative solutions to the problems of those special populations.

The program standards shall serve as educational documents to inform the public of the current state-of-the-art in effective and cost-efficient alcohol and drug problem programming.

SEC. 64.8. Section 11834.37 of the Health and Safety Code is amended to read:

11834.37. (a) Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions. In the event of conflict between this chapter and the Government Code, the Government Code shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) The department shall commence and process licensure revocations under this chapter in a timely and expeditious manner. The Office of Administrative Hearings shall give priority calendar preference to licensure revocation hearings pursuant to this chapter, particularly revocations where the health and safety of the residents are in question.

SEC. 65. Section 11994 of the Health and Safety Code is amended to read:

11994. (a) In order to assure the quality of drug programs and expand the availability of funding resources, the department shall implement a program certification procedure for drug abuse treatment services funded under this part. The department, after consultation with the State Advisory Board on Drug Programs, the County Drug Program Administrators Association, and other interested organizations and individuals, shall develop standards for the drug abuse treatment services describing the minimal level of service quality required of programs to qualify for and obtain state certification. The standards shall be excluded from the provisions of Section 11340.5 of the Government Code and the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Compliance with these standards shall be voluntary on the part of programs. For the purposes of Section 2626.2 of the

Unemployment Insurance Code, certification shall be equivalent to program review.

(b) The department may charge a reasonable fee for the certification or renewal certification of a program which voluntarily requests the certification. The fee shall be set at a level sufficient to cover administrative costs of the program certification process incurred by the department. In calculating the administrative costs the department shall include staff salaries and benefits, related travel costs, and state operational and administrative costs.

(c) The department may contract with private individuals or agencies to provide technical assistance and training to qualify programs for state certification. The department may charge a fee for these services.

SEC. 65.4. Section 18930 of the Health and Safety Code is amended to read:

18930. (a) Any building standard adopted or proposed by state agencies shall be submitted to, and approved or adopted by, the California Building Standards Commission prior to codification. Prior to submission to the commission, building standards shall be adopted in compliance with the procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Building standards adopted by state agencies and submitted to the commission for approval shall be accompanied by an analysis written by the adopting agency or state agency that proposes the building standards which shall, to the satisfaction of the commission, justify the approval thereof in terms of the following criteria:

(1) The proposed building standards do not conflict with, overlap, or duplicate other building standards.

(2) The proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency.

(3) The public interest requires the adoption of the building standards.

(4) The proposed building standard is not unreasonable, arbitrary, unfair, or capricious, in whole or in part.

(5) The cost to the public is reasonable, based on the overall benefit to be derived from the building standards.

(6) The proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.

(7) The applicable national specifications, published standards, and model codes have been incorporated therein as provided in this part, where appropriate.

(A) If a national specification, published standard, or model code does not adequately address the goals of the state agency, a statement defining the inadequacy shall accompany the proposed building standard when submitted to the commission.

(B) If there is no national specification, published standard, or model code that is relevant to the proposed building standard, the state agency shall prepare a statement informing the commission and submit that statement with the proposed building standard.

(8) The format of the proposed building standards is consistent with that adopted by the commission.

(9) The proposed building standard, if it promotes fire and panic safety, as determined by the State Fire Marshal, has the written approval of the State Fire Marshal.

(b) In reviewing building standards submitted for its approval, the commission shall consider only the record of the proceedings of the adopting agency, except as provided in subdivision (b) of Section 11359 of the Government Code.

(c) Where the commission is the adopting agency, it shall consider the record submitted to, and considered by, the state agency that proposes the building standards and the record of public comment that results from the commission's adoption of proposed regulations.

(d) (1) The commission shall give great weight to the determinations and analysis of the adopting agency or state agency that proposes the building standards on each of the criteria for approval set forth in subdivision (a). Any factual determinations of the adopting agency or state agency that proposes the building standards shall be considered conclusive by the commission unless the commission specifically finds, and sets forth its reasoning in writing, that the factual determination is arbitrary and capricious or substantially unsupported by the evidence considered by the adopting agency or state agency that proposes the building standards.

(2) Whenever the commission makes a finding, as described in this subdivision, it shall return the standard to the adopting agency or state agency that proposes the building standards for a reexamination of its original determination of the disputed fact.

(e) Whenever a building standard is principally intended to protect the public health and safety, its adoption shall not be a "factual determination" for purposes of subdivision (d). Whenever a building standard is principally intended to conserve energy or other natural resources, the commission shall consider or review the cost to the public or benefit to be derived as a "factual determination" pursuant to subdivision (d). Whenever a building standard promotes fire and panic safety, each agency shall, unless adopted by the State Fire Marshal, submit the building standard to the State Fire Marshal for prior approval.

(f) Whenever the commission finds, pursuant to paragraph (2) of subdivision (a), that a building standard is adopted by an adopting agency pursuant to statutes requiring adoption of the building standard, the commission shall not consider or review whether the adoption is in the public interest pursuant to paragraph (3) of subdivision (a).

SEC. 65.8. Section 18949.6 of the Health and Safety Code is amended to read:

18949.6. (a) The commission shall adopt regulations setting forth the procedure for the adoption of building standards and administrative regulations that apply directly to the implementation or enforcement of building standards.

(b) Regulatory adoption shall be accomplished so as to facilitate the triennial adoption of the specified model codes pursuant to Section 18928.

(c) The regulations shall allow for the distribution of proposed building standards and regulatory changes to the public for review in compliance with the requirements of the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) and for the acceptance of responses from the public.

SEC. 66. Section 25149 of the Health and Safety Code is amended to read:

25149. (a) Notwithstanding any other provision of law, except as provided in Section 25149.5 or 25181 of this code or Section 731 of the Code of Civil Procedure, no city or county, whether chartered or general law, or district may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment, or recovery of resources from hazardous waste or a mix of hazardous and solid wastes at that facility, unless, after public notice and hearing, the director determines that the operation of the facility may present an imminent and substantial endangerment to health and the environment. However, nothing in this section authorizes an operator of that facility to violate any term or condition of a local land use permit or any other provision of law not in conflict with this section.

(b) The director shall, pursuant to subdivision (c), conduct the hearing specified in subdivision (a) to determine whether the operation of an existing hazardous waste facility may present an imminent and substantial endangerment to health and the environment whenever any of the following occurs:

(1) A state or federal public agency requires any person to evacuate a residence or requires the evacuation of a school, place of employment, commercial establishment, or other facility to which the public has access, because of the release of a hazardous substance from the facility.

(2) For more than five days in any month, the air emissions from the facility result in the violation of an emission standard for a hazardous air pollutant established pursuant to Section 7412 of Title 42 of the United States Code or the threshold exposure level for a toxic air contaminant, as defined in Section 39655.

(3) A state or federal public agency requires that the use of a source of drinking water be discontinued because of the

contamination of the source by a release of hazardous waste, hazardous substances, or leachate from the facility.

(4) A state agency, or the board of supervisors of the county in which the facility is located, upon recommendation of its local health officer, makes a finding that the public health has been affected by a release of hazardous wastes from the facility. The finding shall be based on statistically significant data developed in a health effects study conducted according to a study design, and using a methodology, which are developed after considering the suggestions on study design and methodology made by interested parties and which are approved by the Epidemiological Studies Section in the Epidemiology and Toxicology Branch of the department before beginning the study.

(5) The owner or operator of the facility is in violation of an order issued pursuant to Section 25187 which requires one or both of the following:

(A) The correction of a violation or condition that has resulted, or threatens to result, in an unauthorized release of hazardous waste or a constituent of hazardous waste from the facility into either the onsite or offsite environment.

(B) The cleanup of a release of hazardous waste or a constituent of hazardous waste, the abatement of the effects of the release, and any other necessary remedial action.

(6) The facility is in violation of an order issued pursuant to Article 1 (commencing with Section 13300) of, or Article 2 (commencing with Section 13320) of, Chapter 5 of Division 7 of the Water Code or in violation of a temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to Article 4 (commencing with Section 13340) of Chapter 5 of Division 7 of the Water Code.

(c) Whenever the director determines that a hearing is required, as specified in subdivision (b), the director shall immediately request the Office of Administrative Hearings to assign an administrative law judge to conduct the hearing, pursuant to this subdivision.

(1) After an administrative law judge is assigned by the Office of Administrative Hearings, the director shall transmit to the administrative law judge and to the operator of the existing hazardous waste facility, all relevant documents, information, and data that were the basis for the director's determination. The director shall also prepare a notice specifying the time and place of the hearing. The notice shall also include a clear statement of the reasons for conducting the hearing, a description of the facts, data, circumstances, or occurrences that are the cause for conducting the hearing, and the issues to be addressed at the hearing. The hearing shall be held as close to the location of the existing hazardous waste facility as is practicable and shall commence no later than 30 days following the director's request to the Office of Administrative Hearings to assign an administrative law judge to the case.

(2) The hearing specified in paragraph (1) shall be conducted in accordance with Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and Sections 11511 to 11515, inclusive, of, the Government Code. The administrative law judge's proposed decision shall be transmitted to the director within 30 days after the case is submitted.

(3) The director may adopt the proposed decision of the administrative law judge in its entirety or may decide the case upon the record, as provided in Section 11517 of the Government Code. The director's decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision is subject to judicial review in accordance with Section 11523 of the Government Code.

SEC. 67. Section 25229 of the Health and Safety Code is amended to read:

25229. (a) If, after the hearing, the director makes the decision that the subject land should not be designated a hazardous waste property or border zone property, the director shall issue that decision in writing and serve it in the manner provided in subdivision (c).

(b) If, after the hearing, the director makes the decision, upon a preponderance of the evidence, including any evidence developed at any time prior to the hearing, that the land should be designated a hazardous waste property or a border zone property, the director shall issue that decision in writing, which shall identify the subject land, or portion thereof, by street address, assessor's parcel number, or legal description and the name of the owner of record, contain findings of fact based upon the issues presented, including the reasons for this designation, the substances on, under, or in the land, and the significant existing or potential hazards to present or future public health and safety, and order every owner of the designated land to take all of the following actions:

(1) Execute before a notary a written instrument which imposes an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, upon the present and future uses of the land pursuant to Section 25230. The written instrument shall also include a copy of the director's decision.

(2) Return the executed instrument to the director within 30 days after the decision is delivered or mailed. Within 10 days after receiving the instrument, the director shall execute the written instrument and return the instrument to the owner.

(3) Record the written instrument pursuant to Section 25230 within 10 days after receiving the written instrument executed by the director, as specified in paragraph (2).

(4) Return the recorded written instrument to the director within 10 days after the owner records the instrument, as specified in paragraph (3).

(c) Copies of the determination shall be delivered or sent by certified mail to the owner of the property, the legislative body of the city or county in whose jurisdiction the land is located, and any other persons who were served pursuant to Section 25222 or who were permitted to intervene in the proceeding pursuant to Section 25226.

(d) Failure or refusal to comply with any order issued pursuant to this section shall be treated in the manner provided by Article 12 (commencing with Section 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 68. Section 25299.59 of the Health and Safety Code is amended to read:

25299.59. (a) Except as specified in subdivision (b), the procedures in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to the proceedings conducted by the board pursuant to this article.

(b) Notwithstanding subdivision (a), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to the proceedings conducted by the board pursuant to this article.

(c) This article does not require any person to pursue a claim against the board pursuant to this article before seeking any other remedy.

(d) If the board has paid out of the fund for any costs of corrective action, the board shall not pay any other claim out of the fund for the same costs.

(e) Notwithstanding Sections 25299.57 and 25299.58, the board shall not reimburse or authorize prepayment of any claim in an aggregate amount exceeding nine hundred ninety thousand ($990,000) for a claim arising from the same event or occurrence.

(f) The board may conduct an audit of any corrective action claim honored pursuant to this chapter. The claimant shall reimburse the state for any costs disallowed in the audit. A claimant shall preserve, and make available, upon request of the board or the board's designee, all records pertaining to the corrective action claim for a period of three years after the final payment is made to the claimant.

SEC. 69. Section 25375.5 of the Health and Safety Code is amended to read:

25375.5. (a) Except as specified in subdivision (b), the procedures specified in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to the proceedings conducted by the board pursuant to this article.

(b) Notwithstanding subdivision (a), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to the proceedings conducted by the board pursuant to this article.

(c) The board may consider evidence presented by any person against whom a demand was made pursuant to subdivision (c) of

Section 25372. The evidence presented by that person shall become a part of the record upon which the board's decision shall be based.

SEC. 70. Section 32154 of the Health and Safety Code is amended to read:

32154. The board or the hearing officer, if one is appointed, shall have the same power with respect to the issuance of subpoenas and subpoenas duces tecum as that granted to any agency or presiding officer pursuant to Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. Any subpoena or subpoena duces tecum issued pursuant to this section shall have the same force and effect and impose the same obligations upon witnesses as that provided in Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 71. Section 39657 of the Health and Safety Code is amended to read:

39657. (a) Except as provided in subdivision (b), the state board shall identify toxic air contaminants which are emitted into the ambient air of the state using the procedures and following the requirements prescribed by Article 3 (commencing with Section 39660).

(b) The state board shall, by regulation, designate any substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)) as a toxic air contaminant. A regulation that designates a hazardous air pollutant as a toxic air contaminant shall be deemed to be a regulation mandated by federal law and is not subject to Sections 11346.2 and 11346.9 of the Government Code, Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, or Article 3 (commencing with Section 39660).

SEC. 71.5. Section 40843 of the Health and Safety Code is amended to read:

40843. Upon receipt of a report submitted pursuant to Section 40842, the superior court shall proceed as specified in Section 11455.20 of the Government Code.

SEC. 72. Section 50199.17 of the Health and Safety Code is amended to read:

50199.17. (a) The committee may adopt, amend, or repeal rules and regulations for the allocation of housing credits pursuant to this chapter and Sections 17058 and 23610.5 of the Revenue and Taxation Code without complying with the procedural requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as described in subdivision (b).

(b) The committee shall provide a notice of proposed action as described in Section 11346.5 of the Government Code. The notice of proposed action shall be provided to the public at least 21 days before the close of the public comment period, and the committee shall

schedule at least one public hearing as described in Section 11346.8 of the Government Code before the close of the public comment period. The committee shall maintain a rulemaking file as described in Section 11347.3 of the Government Code. The final version of the regulations shall be accompanied by a final statement of reasons as described in subdivision (a) of Section 11346.9 of the Government Code.

(c) These rules and regulations shall be effective immediately upon adoption by the committee.

(d) The committee may also adopt, amend, or repeal emergency rules and regulations pursuant to this chapter and pursuant to Sections 17057.5, 17058, 23610.4, and 23610.5 of the Revenue and Taxation Code. The adoption, amendment, or repeal of these regulations shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning or purposes of Section 11346.1 of the Government Code.

SEC. 72.4. Section 57005 of the Health and Safety Code is amended to read:

57005. (a) Commencing January 1, 1994, each board, department, and office within the agency, before adopting any major regulation, shall evaluate the alternatives to the requirements of the proposed regulation that are submitted to the board, department, or office pursuant to paragraph (7) of subdivision (a) of Section 11346.5 of the Government Code and consider whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements.

(b) For purposes of this section, "major regulation" means any regulation that will have an economic impact on the state's business enterprises in an amount exceeding ten million dollars ($10,000,000), as estimated by the board, department, or office within the agency proposing to adopt the regulation in the assessment required by subdivision (a) of Section 11346.3 of the Government Code.

(c) On or before December 31, 1994, after consulting with the Secretary of Trade and Commerce, the director or executive officer of each board, department, and office within the agency, and after receiving public comment, the secretary shall adopt guidelines to be followed by the boards, departments, and offices within the agency concerning the methods and procedures to be used in conducting the evaluation required by this section.

SEC. 72.8. Section 146 of the Labor Code is amended to read:

146. In the conduct of hearings related to permanent variances, the board and its representatives are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure but shall conduct the hearings in accordance with Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of

Division 3 of Title 2 of, and Section 11513 of, the Government Code. A full and complete record shall be kept of all proceedings.

SEC. 73. Section 1144.5 is added to the Labor Code, to read:

1144.5. (a) Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the board under this part, except a hearing to determine an unfair labor practice charge.

(b) Notwithstanding Sections 11425.30 and 11430.10 of the Government Code, in a hearing to determine an unfair labor practice charge, a person who has participated in a determination of probable cause, injunctive or other pre-hearing relief, or other equivalent preliminary determination in an adjudicative proceeding may serve as presiding officer or as a supervisor of the presiding officer or may assist or advise the presiding officer in the same proceeding.

SEC. 74. Section 4600 of the Labor Code is amended to read:

4600. Medical, surgical, chiropractic, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer. In the case of his or her neglect or refusal seasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. After 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area. However, if an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury. If an employee requests a change of physician pursuant to Section 4601, the request may be made at any time after the injury, and the alternative physician or chiropractor shall be provided within five days of the request as required by Section 4601. For the purpose of this section, "personal physician" means the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, who has previously directed the medical treatment of the employee, and who retains the employee's medical records, including his or her medical history.

Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation judge, the employee submits to examination by a physician, he or she shall be entitled to receive in addition to all other benefits herein provided all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination. Regardless of the date

of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents ($0.21) a mile or the mileage rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, a workers' compensation judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, "qualified interpreter" means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.

SEC. 75. Section 5278 of the Labor Code is amended to read:

5278. (a) No disclosure of any offers of settlement made by any party shall be made to the arbitrator prior to the filing of the award.

(b) Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code applies to a communication to the arbitrator or a potential arbitrator.

SEC. 76. Section 5710 of the Labor Code is amended to read:

5710. (a) The appeals board, a workers' compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a workers' compensation judge in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before the agency authorized to hear workers' compensation matters in those other jurisdictions.

(b) Where the employer or insurance carrier requests a deposition to be taken of an injured employee, or any person claiming benefits as a dependent of an injured employee, the deponent is entitled to receive in addition to all other benefits:

(1) All reasonable expenses of transportation, meals, and lodging incident to the deposition.

(2) Reimbursement for any loss of wages incurred during attendance at the deposition.

(3) A copy of the transcript of the deposition, without cost.

(4) A reasonable allowance for attorney's fees for the deponent, if represented by an attorney licensed by the state bar of this state. The fee shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the employer or his or her insurer.

(5) A reasonable allowance for interpreter's fees for the deponent, if interpretation services are needed and provided by a language interpreter certified or deemed certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code. The fee shall be in accordance with the fee schedule set by the administrative director and paid by the employer or his or her insurer. Payment for interpreter's services shall be allowed for deposition of a non-English-speaking injured worker, and for any other deposition-related events as permitted by the administrative director.

SEC. 77. Section 5811 of the Labor Code is amended to read:

5811. (a) No fees shall be charged by the clerk of any court for the performance of any official service required by this division, except for the docketing of awards as judgments and for certified copies of transcripts thereof. In all proceedings under this division before the appeals board, costs as between the parties may be allowed by the appeals board.

(b) It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter. A qualified interpreter is a language interpreter who is certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.

Interpreter fees which are reasonably, actually, and necessarily incurred shall be allowed as cost under this section, provided they are in accordance with the fee schedule set by the administrative director.

A qualified interpreter may render services during the following:

(1) A deposition.

(2) An appeals board hearing.

(3) During those settings which the administrative director determines are reasonably necessary to ascertain the validity or extent of injury to an employee who cannot communicate in English.

SEC. 78. Section 6380.5 of the Labor Code is amended to read:

6380.5. (a) Prior to the director's adoption of the list of hazardous substances, the director shall submit the list to the Occupational Safety and Health Standards Board for its approval. Within 90 days of receiving the list from the director, the board, after holding a hearing and considering the recommendations of the employers and employees who may be affected, shall do the following:

(1) Determine whether the substances listed are properly listed as hazardous substances pursuant to the criteria of Section 6382.

(2) Modify the list as necessary to achieve compliance with Section 6382.

(3) Approve the list of hazardous substances.

Upon receipt of the list approved by the board, the director shall adopt the list as a regulation pursuant to the procedures set forth in Section 6380. The inclusion or exclusion of any individual substance on the list of hazardous substances shall not be subject to Section 11346.2 or 11346.9 of the Government Code.

(b) Prior to the director's adoption of any additions to the list of hazardous substances pursuant to subdivision (c) of Section 6382, the director shall submit the additions to the board for its approval. Within 60 days of receiving the additions from the director, the board, after holding a hearing and considering the recommendations of the employers and employees who may be affected, shall do the following:

(1) Determine whether the substances listed are properly listed as hazardous substances pursuant to the criteria of Section 6382.

(2) Modify the additions as necessary to achieve compliance with Section 6382.

(3) Approve the list of hazardous substances.

Upon receipt of the additions approved by the board, the director shall adopt the additions as a regulation pursuant to the procedures set forth in Section 6380. The inclusion or exclusion of any individual substance on the list of hazardous substances shall not be subject to Section 11346.2 or 11346.9 of the Government Code.

SEC. 78.5. Section 6603 of the Labor Code is amended to read:

6603. (a) The rules of practice and procedure adopted by the appeals board shall be consistent with Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and Sections 11507, 11507.6, 11507.7, 11513, 11514, 11515, and 11516 of, the Government Code, and shall provide affected employees or representatives of affected employees an opportunity to participate as parties to a hearing under Section 6602.

(b) The superior courts shall have jurisdiction over contempt proceedings, as provided in Article 12 (commencing with Section 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 79. Section 105 is added to the Military and Veterans Code, to read:

105. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing conducted by the Military Department under this code.

SEC. 80. Section 3066 is added to the Penal Code, to read:

3066. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a parole hearing or other adjudication concerning rights of an inmate

or parolee conducted by the Department of Corrections or the Board of Prison Terms.

SEC. 81. Section 663.1 of the Public Resources Code is amended to read:

663.1. (a) For the purposes of this section, "ex parte communication" means any oral or written communication between a member of the board and an interested person about a matter within the board's jurisdiction that does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.

(b) For purposes of this section, "a matter within the board's jurisdiction" means any action on a reclamation plan or financial assurance appealed pursuant to subdivision (e) of Section 2770, any review of an order setting administrative penalties pursuant to Section 2774.2, or any review of an appeal pursuant to Section 2775.

(c) A board member or any person, other than a staff member of the board, department, or any other state agency, who is acting in his or her official capacity and who intends to influence the decision of the board on a matter within the board's jurisdiction, shall not conduct an ex parte communication, unless the board member or the person who engages in the communication with the board member discloses that communication in one of the following ways:

(1) The board member or the person fully discloses the communication and makes public the ex parte communication by providing a full report of the communication to the executive officer or, if the communication occurs within seven days of the next board hearing, to the board on the record of the proceeding of that hearing.

(2) When two or more board members receive substantially the same written communication or receive the same oral communication from the same party on the same matter, one of the board members fully discloses the communication on behalf of the other board member or members who received the communication and requests in writing that it be placed in the board's official record of the proceeding.

(d) (1) The board shall adopt standard disclosure forms for reporting ex parte communications which shall include, but not be limited to, all of the following information:

(A) The date, time, and location of the communication.

(B) The identity of the person or persons initiating and the person or persons receiving the communication.

(C) A complete description of the content of the communication, including the complete text of any written material that was part of the communication.

(2) The executive officer shall place in the public record any report of an ex parte communication.

(e) Communications shall cease to be ex parte communications when fully disclosed and placed in the board's official record.

(f) In addition to any other applicable penalty, a board member who knowingly violates this section is subject to a civil fine, not to exceed seven thousand five hundred dollars ($7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.

(g) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the board under this code.

SEC. 82. Section 4204 of the Public Resources Code is amended to read:

4204. The director shall periodically review zones designated and rated pursuant to this article and, as necessary, shall revise zones or their ratings or repeal the designation of zones. Any revision of a zone or its rating or any repeal of a zone shall conform to the requirements of Section 4203. In addition, the revision or repeal of a zone may be petitioned pursuant to Sections 11340.6 and 11340.7 of the Government Code.

SEC. 82.5. Section 25513.3 is added to the Public Resources Code, to read:

25513.3. Notwithstanding Sections 11425.30 and 11430.10 of the Government Code, unless a party demonstrates other statutory grounds for disqualification, a person who has served as investigator or advocate in an adjudicative proceeding of the commission under this code may serve as a supervisor of the presiding officer or assist or advise the presiding officer in the same proceeding if the service, assistance, or advice occurs more than one year after the time the person served as investigator or advocate, provided the content of any advice is disclosed on the record and all parties have an opportunity to comment on the advice.

SEC. 83. Section 30329 is added to the Public Resources Code, to read:

30329. Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the California Coastal Commission under this division.

SEC. 84. Section 40412 of the Public Resources Code is amended to read:

40412. (a) For the purposes of this section, "ex parte communication" means any oral or written communication concerning matters, other than purely procedural matters, under the board's jurisdiction which are subject to a rollcall vote pursuant to Section 40510.

(b) No board member or any person, excepting a staff member of the board acting in his or her official capacity, who intends to

influence the decision of a board member on a matter before the board, shall conduct an ex parte communication, except as follows:

(1) If an ex parte communication occurs, the board member shall notify the interested party that a full disclosure of the ex parte communication shall be entered in the board's record.

(2) Communications cease to be ex parte communications when either of the following occurs:

(A) The board member or the person who engaged in the communication with the board member fully discloses the communication and requests in writing that it be placed in the board's official record of the proceeding.

(B) When two or more board members receive substantially the same written communication, or are party to the same oral communication, from the same party on the same matter, and a single board member fully discloses the communication on behalf of the other board member or members who received the communication and requests in writing that it be placed in the board's official record of the proceeding.

(c) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the board to which this section applies.

SEC. 85. Section 1701 of the Public Utilities Code is amended to read:

1701. (a) All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

(b) Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the commission under this code.

SEC. 86. Section 1636 of the Revenue and Taxation Code is amended to read:

1636. The county board of supervisors may appoint one or more assessment hearing officers or contract with the Office of Administrative Hearings for the services of an administrative law judge pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code to conduct hearings on any assessment protests filed under Article 1 (commencing with Section 1601) of this chapter and to make recommendations to the county board of equalization or assessment appeals board concerning the protests. Only persons meeting the

qualifications prescribed by Section 1624 may be appointed as an assessment hearing officer.

SEC. 87. Section 19044 of the Revenue and Taxation Code is amended to read:

19044. (a) If a protest is filed, the Franchise Tax Board shall reconsider the assessment of the deficiency and, if the taxpayer has so requested in his or her protest, shall grant the taxpayer or his or her authorized representatives an oral hearing. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing under this subdivision.

(b) The Franchise Tax Board may act on the protest in whole or in part. In the event the Franchise Tax Board acts on the protest in part only, the remaining part of the protest shall continue to be under protest until the Franchise Tax Board acts on that part.

SEC. 87.5. Section 19084 of the Revenue and Taxation Code is amended to read:

19084. (a) (1) Within five days after the day on which either a notice and demand for payment is mailed or issued pursuant to Section 19081, or notice and demand for a return and payment is mailed or issued pursuant to Section 19082, the Franchise Tax Board shall mail or issue the taxpayer a written statement of the information upon which the Franchise Tax Board relies in issuing that notice and demand.

(2) Within 30 days after the day on which the taxpayer is furnished the written statement described in paragraph (1), or within 30 days after the last day of the period within which the statement is required to be furnished, the taxpayer may petition the Franchise Tax Board to review whether its finding pursuant to Section 19081 or 19082 is reasonable under the circumstances, specifying the grounds on which the petition is based. The filing of a petition for review shall not operate to stay collection. Collection may be stayed only as provided in Section 19083. A petition filed pursuant to this paragraph shall also be considered a protest filed pursuant to Section 19041 against the proposed additional tax.

(3) If a petition for review under paragraph (2) is not made within the 30-day period set forth in that paragraph, the finding of the Franchise Tax Board pursuant to Section 19081 or 19082 is final.

(4) After a petition for review is filed under paragraph (2), the Franchise Tax Board shall determine whether or not the issuance of notice and demand under Section 19081 or 19082 is reasonable under the circumstances. In making this determination, the Franchise Tax Board shall grant the taxpayer or authorized representative an oral hearing if the taxpayer has so requested in the petition. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing under this paragraph. The burden of proof with respect to whether a jeopardy

exists as to collection or an assessment is upon the Franchise Tax Board.

(5) The Franchise Tax Board shall make the determination under paragraph (4) within 90 days of the filing of the petition for review unless the taxpayer requests, in writing, additional time.

(6) In making the determination required by paragraph (4), the Franchise Tax Board shall consider all relevant factors, including, but not limited to, the likelihood that collection will be jeopardized, the assets of the taxpayer, and the amount of the assessment as it relates to whether jeopardy status exists. The burden of proof as to the amount of the assessment for purposes of determining jeopardy status is upon the taxpayer.

(b) (1) Within 60 days after the earlier of the following days, the taxpayer may appeal the determination to the State Board of Equalization in the manner provided in Section 19085:

(A) The day the Franchise Tax Board notifies the taxpayer of the determination described in paragraph (4) of subdivision (a).

(B) One day after the time period prescribed by paragraph (5) of subdivision (a) for the Franchise Tax Board to make its determination.

(2) If an appeal is not filed before the expiration of the time periods, the Franchise Tax Board's determination is final. Filing of an appeal shall not operate to stay collection. Collection may be stayed only as provided in Section 19083.

(3) Within 60 days after an appeal is filed under paragraph (1), the board shall determine whether the issuance of notice and demand under Section 19081 or 19082 is reasonable under the circumstances. The burden of proof with respect to whether a jeopardy exists as to collection or an assessment is upon the Franchise Tax Board.

(4) If the board determines that a jeopardy status does not apply to all or part of the assessment, the board may modify the amount of the assessment to which the jeopardy attaches. If the board does not act within the time period provided in paragraph (3) as modified by paragraph (6), the board will be deemed to have denied the taxpayer's appeal.

(5) In making the determination required by paragraph (3), the board shall consider all relevant factors, including, but not limited to, the likelihood that collection will be jeopardized, the assets of the taxpayer, and the amount of the assessment as it relates to whether jeopardy status exists. The burden of proof as to the amount of the assessment for purposes of determining jeopardy status is upon the taxpayer.

(6) If either party requests an extension of the 60-day period set forth in paragraph (3) and establishes reasonable grounds why the extension should be granted, the board may grant an extension of not more than 30 additional days.

(c) (1) Within 60 days after the earlier of the following days, either party may bring a civil action against the other in superior

court for a judicial determination as to whether or not the issuance of the notice and demand under Section 19081 or 19082 is reasonable under the circumstances:

(A) The day the board notifies the taxpayer of its determination described in paragraph (3), as modified by paragraph (6), of subdivision (b).

(B) If the board fails to make a timely determination, then one day after the time prescribed for the board to make its determination.

(2) If a civil action under this subdivision is not commenced within the 60-day period set forth in paragraph (1), the board's determination is final. The filing of the civil action shall not operate to stay collection. Collection shall be stayed only as provided by Section 19083.

(3) Within 60 days after proper service is made, the superior court shall determine whether the issuance of notice and demand under Section 19081 or 19082 is reasonable under the circumstances. The burden of proof with respect to whether a jeopardy exists as to collection or an assessment is upon the Franchise Tax Board.

(4) If the court determines that a jeopardy status does not apply to all or part of the assessment, the court may modify the amount of the assessment to which the jeopardy attaches.

(5) In making the determination required by paragraph (3), the superior court shall consider all relevant factors, including, but not limited to, the likelihood that collection will be jeopardized, the assets of the taxpayer, and the amount of the assessment as it relates to whether jeopardy status exists. The burden of proof as to the amount of the assessment for purposes of determining jeopardy status is upon the taxpayer.

(6) If either party in the action requests an extension of the 60-day period set forth in paragraph (3) of subdivision (c) and establishes reasonable grounds why the extension should be granted, the superior court may grant an extension of not more than 30 additional days.

(7) Actions filed pursuant to this section shall be filed in the Superior Court of the County of Los Angeles, the City and County of San Francisco, the County of San Diego, or the County of Sacramento. Sections 19387 and 19389 shall apply to those actions.

(8) The determination made by a superior court under this section shall be final and conclusive and shall not be reviewed by any other court.

SEC. 88. Section 409 of the Unemployment Insurance Code is amended to read:

409. The chairperson shall assign cases before the board to any two members of the board for consideration and decision. Assignments by the chairperson of members to the cases shall be rotated so as to equalize the workload of the members, but with the composition of the members so assigned being varied and changed to assure that there shall never be a fixed and continuous composition

of members. Except as otherwise provided, the decision of the two members assigned the case shall be the decision of the appeals board. In the event that the two members do not concur in the decision, the chairperson or another member of the board designated by the chairperson shall be assigned to the panel and shall resolve the impasse. A case shall be considered and decided by the appeals board acting as a whole at the request of any member of the appeals board.

The appeals board shall meet as a whole when the chairperson may direct to consider and pass on any matters that the chairperson may bring before it, and to consider and decide cases that present issues of first impression or that will enable the appeals board to achieve uniformity of decisions by the respective members.

The appeals board, acting as a whole, may designate certain of its decisions as precedents. Precedent decisions of the appeals board are subject to Section 11425.60 of the Government Code. The appeals board, acting as a whole, may, on its own motion, reconsider a previously issued decision solely to determine whether or not the decision shall be designated as a precedent decision. Decisions of the appeals board acting as a whole shall be by a majority vote of its members. The director and the appeals board administrative law judges shall be controlled by those precedents except as modified by judicial review. If the appeals board issues decisions other than those designated as precedent decisions, anything incorporated in those decisions shall be physically attached to and be made a part of the decisions. The appeals board may make a reasonable charge as it deems necessary to defray the costs of publication and distribution of its precedent decisions and index of precedent decisions.

SEC. 89. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, or 3065, the board shall fix a time, which shall be within 60 days of the order, and place of hearing, and shall send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups which have requested notification by the board of protests and decisions of the board. Except in any case involving a franchisee who deals exclusively in motorcycles, the board or its secretary may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but in no event shall the hearing be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, "good cause" includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board, or a hearing officer designated by the board, shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Sections 11507.6, 11507.7, 11511, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In any hearing on a protest filed pursuant to Section 3060 or 3062, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealership.

(c) In any hearing on a protest filed pursuant to Section 3064 or 3065, the franchisee shall have the burden to establish that the schedule of compensation or the warranty reimbursement schedule is not reasonable.

(d) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, any matter involving a protest filed pursuant to this article.

SEC. 90. Section 11728 of the Vehicle Code is amended to read:

11728. As part of a compromise settlement agreement entered into pursuant to Section 11707 or 11808.5, the department may assess a monetary penalty of not more than two thousand five hundred dollars ($2,500) per violation and impose a license suspension of not more than 30 days for any dealer who violates subdivision (r) of Section 11713. The extent of the penalties shall be based on the nature of the violation and effect of the violation on the purposes of this article. Except for the penalty limits provided for in Sections 11707 and 11808.5, all the provisions governing compromise settlement agreements for dealers, salespersons, and wholesalers apply to this section, and Section 11415.60 of the Government Code does not apply.

SEC. 91. Section 14112 of the Vehicle Code is amended to read:

14112. (a) All matters in a hearing not covered by this chapter shall be governed, as far as applicable, by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Subdivision (a) of Section 11425.30 of the Government Code does not apply to a proceeding for issuance, denial, revocation, or suspension of a driver's license pursuant to this division. The Department of Motor Vehicles shall study the effect of that subdivision on proceedings involving special certificates issued pursuant to Sections 12517 to 12527, inclusive, and shall report to the Legislature by December 31, 1999, with recommendations concerning experience with its application in those proceedings.

SEC. 92. Section 1778 is added to the Welfare and Institutions Code, to read:

1778. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a parole hearing or other adjudication concerning rights of a person committed to the control of the Youth Authority conducted by the Youth Authority or the Youthful Offender Parole Board.

SEC. 93. Section 3158 is added to the Welfare and Institutions Code, to read:

3158. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a release hearing or other adjudication concerning rights of a person committed to the custody of the Director of Corrections conducted by the Narcotic Addiction Evaluation Authority.

SEC. 94. Section 4689.5 of the Welfare and Institutions Code is amended to read:

4689.5. (a) Proceeding for the termination, or denial of vendorization as a family home agency or family home pursuant to Section 4689.4 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the State Department of Developmental Services shall have all the powers granted by Chapter 5. In the event of conflict between this section and Chapter 5, Chapter 5 shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be a preponderance of the evidence.

(c) The hearing shall be held within 90 calendar days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may grant a continuance of the hearing, but only upon finding the existence of one or more of the following:

(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of that person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.

(4) A stipulation for continuance signed by all parties or their authorized representatives that is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.

(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

(d) In addition to the witness fees and mileage provided by Section 11450.40 of the Government Code, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses in advance of the hearing.

SEC. 95. Section 11350.6 of the Welfare and Institutions Code, as amended by Section 3.6 of Chapter 906 of the Statutes of 1994, is amended to read:

11350.6. (a) As used in this section:

(1) "Applicant" means any person applying for issuance or renewal of a license.

(2) "Board" means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, or registration authorizing a person to engage in a business, occupation, or profession.

(3) "Certified list" means a list provided by the district attorney to the State Department of Social Services in which the district attorney verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.

(4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court-ordered or by agreement with the district attorney, on a support arrearage, or in making periodic payments in full, whether court-ordered or by agreement with the district attorney, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The district attorney is authorized to use this section to enforce orders for spousal support only when the district attorney is also enforcing a related

child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 11475.1 and 11475.2.

(5) "License" includes membership in the State Bar, and a certificate, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle.

(6) "Licensee" means any person holding a license, certificate, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code.

(b) The district attorney shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The district attorney shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the district attorney who certified the list to the State Department of Social Services. The district attorney shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The district attorney shall submit to the State Department of Social Services an updated certified list on a monthly basis.

(c) The State Department of Social Services shall consolidate the certified lists received from the district attorneys and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board which is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the State Department of Social Services, all boards subject to this section shall implement procedures to accept and process the list provided by the State Department of Social Services, in accordance with this section.

(e) (1) Promptly after receiving the certified consolidated list from the State Department of Social Services, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the State Department of Social Services. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) The 150-day time period for a temporary license shall not be extended. Only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(3) (A) The State Department of Social Services may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the State Department of Social Services and subject to approval by the State Department of Social Services. The notice shall include the address and telephone number of the district attorney who submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that district

attorney's office as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the district attorney who submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the district attorney who submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The State Department of Social Services shall also develop a form that the applicant shall use to request a review by the district attorney. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) Each district attorney shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review on the form specified in subdivision (f) to the district attorney who certified the applicant's name. The district attorney shall, within 75 days of receipt of the written request, inform the applicant in writing of his or her findings upon completion of the review. The district attorney shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the district attorney for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the district attorney will be unable to complete the review and send notice of his or her findings to the applicant within 75 days. This paragraph applies only if the delay in completing the review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving notice from the board that his or her name is on the list.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the district attorney's notice of his or her findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the district attorney with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the district attorney and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the district attorney to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the district attorney shall not issue a release if the applicant is not in compliance with the judgment or order for support. The district attorney shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the district attorney's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the district attorney's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the district attorney's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with judgment or order of support.

(4) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

The request for judicial review shall be served by the applicant upon the district attorney who submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the district attorney shall immediately send a release in accordance with subdivision (h) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(*l*) The State Department of Social Services shall prescribe release forms for use by district attorneys. When the obligor is in compliance, the district attorney shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support.

If the district attorney determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the district attorney may notify the board, the obligor, and the State Department of Social Services in a format prescribed by the State Department of Social Services that the obligor is not in compliance.

The State Department of Social Services may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in this subdivision.

(m) The State Department of Social Services may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants.

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section shall be subject to the Information Practices Act (Section 1798.76 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The State Department of Social Services and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (*l*).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(w) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

SEC. 95.5. Section 11350.6 of the Welfare and Institutions Code, as amended by Section 3.6 of Chapter 906 of the Statutes of 1994, is amended to read:

11350.6. (a) As used in this section:

(1) "Applicant" means any person applying for issuance or renewal of a license.

(2) "Board" means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, or registration authorizing a person to engage in a business, occupation, or profession.

(3) "Certified list" means a list provided by the district attorney to the State Department of Social Services in which the district attorney verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.

(4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court-ordered or by agreement with the district attorney, on a support arrearage, or in making periodic payments in full, whether court-ordered or by agreement with the district attorney, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The district attorney is authorized to use this section to enforce orders for spousal support only when the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 11475.1 and 11475.2.

(5) "License" includes membership in the State Bar, and a certificate, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. "License" also includes any driver's license issued by the Department of Motor Vehicles.

(6) "Licensee" means any person holding a license, certificate, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including appointment and commission by the Secretary of State as

a notary public. "License" also includes any driver's license issued by the Department of Motor Vehicles.

(b) The district attorney shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The district attorney shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the district attorney who certified the list to the State Department of Social Services. The district attorney shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The district attorney shall submit to the State Department of Social Services an updated certified list on a monthly basis.

(c) The State Department of Social Services shall consolidate the certified lists received from the district attorneys and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board which is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the State Department of Social Services, all boards subject to this section shall implement procedures to accept and process the list provided by the State Department of Social Services, in accordance with this section.

(e) (1) Promptly after receiving the certified consolidated list from the State Department of Social Services, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the State Department of Social Services. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months

from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the district attorney or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3) (A) The State Department of Social Services may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the State Department of Social Services and subject to approval by the State Department of Social Services. The notice shall include the address and telephone number of the district attorney who submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that district attorney's office as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board

shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the district attorney who submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the district attorney who submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The State Department of Social Services shall also develop a form that the applicant shall use to request a review by the district attorney. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each district attorney shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or district attorney, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the district attorney shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review on the form specified in subdivision (f) to the district attorney who certified the applicant's name. The district attorney shall, within 75 days of receipt of the written request, inform the applicant in writing of his or her findings upon completion of the review. The district attorney shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the district attorney for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the district attorney will be unable to complete the review and send notice of his or her findings to the applicant within 75 days. This paragraph applies only if the delay in completing the review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving notice from the board that his or her name is on the list.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the district attorney's notice of his or her findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the district attorney with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the district attorney and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the district attorney to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the district attorney shall not issue a release if the applicant is not in compliance with the judgment or order for support. The district attorney shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the district attorney's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages

accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the district attorney's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the district attorney's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with judgment or order of support.

(4) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

The request for judicial review shall be served by the applicant upon the district attorney who submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the district attorney shall immediately send a release in accordance with subdivision (h) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(*l*) The State Department of Social Services shall prescribe release forms for use by district attorneys. When the obligor is in compliance, the district attorney shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support.

If the district attorney determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the district attorney may notify the board, the obligor, and the State Department of Social Services in a

format prescribed by the State Department of Social Services that the obligor is not in compliance.

The State Department of Social Services may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until such time a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The State Department of Social Services may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The State Department of Social Services and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (*l*).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the State Department of Social Services and the Franchise Tax Board that will require the State Department of Social

Services and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 96. Section 11350.6 of the Welfare and Institutions Code, as amended by Section 3.6 of Chapter 906 of the Statutes of 1994, is amended to read:

11350.6. (a) As used in this section:

(1) "Applicant" means any person applying for issuance or renewal of a license.

(2) "Board" means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, or registration authorizing a person to engage in a business, occupation, or profession.

(3) "Certified list" means a list provided by the district attorney to the State Department of Social Services in which the district attorney verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.

(4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court-ordered or by agreement with the district attorney, on a support arrearage, or in making periodic payments in full, whether court-ordered or by agreement with the district attorney, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in

statute or case law precludes enforcement of the order. The district attorney is authorized to use this section to enforce orders for spousal support only when the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 11475.1 and 11475.2.

(5) "License" includes membership in the State Bar, and a certificate, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. "License" also includes any driver's license issued by the Department of Motor Vehicles.

(6) "Licensee" means any person holding a license, certificate, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. "Licensee" also means any person holding a driver's license issued by the Department of Motor Vehicles.

(b) The district attorney shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The district attorney shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the district attorney who certified the list to the State Department of Social Services. The district attorney shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The district attorney shall submit to the State Department of Social Services an updated certified list on a monthly basis.

(c) The State Department of Social Services shall consolidate the certified lists received from the district attorneys and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board which is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the State Department of Social Services, all boards subject to this section shall implement procedures to accept and process the list provided by the State Department of Social Services, in accordance with this section.

(e) (1) Promptly after receiving the certified consolidated list from the State Department of Social Services, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the State Department of Social Services. The board shall

have the authority to withhold issuance or renewal of the license of any applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the district attorney or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3) (A) The State Department of Social Services may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service

by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the State Department of Social Services and subject to approval by the State Department of Social Services. The notice shall include the address and telephone number of the district attorney who submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that district attorney's office as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the district attorney who submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the district attorney who submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The State Department of Social Services shall also develop a form that the applicant shall use to request a review by the district attorney. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each district attorney shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance

in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or district attorney, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the district attorney shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review on the form specified in subdivision (f) to the district attorney who certified the applicant's name. The district attorney shall, within 75 days of receipt of the written request, inform the applicant in writing of his or her findings upon completion of the review. The district attorney shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the district attorney for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the district attorney will be unable to complete the review and send notice of his or her findings to the applicant within 75 days. This paragraph applies only if the delay in completing the review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving notice from the board that his or her name is on the list.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the district attorney's notice of his or her findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the district attorney with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the district attorney and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the district attorney to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the district attorney shall not issue a release if the applicant is not in compliance with the judgment or order for support. The district attorney shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the district attorney's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the district attorney's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the district attorney's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with judgment or order of support.

(4) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

The request for judicial review shall be served by the applicant upon the district attorney who submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the district attorney shall immediately send a release in accordance with subdivision (h) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the

obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(*l*) The State Department of Social Services shall prescribe release forms for use by district attorneys. When the obligor is in compliance, the district attorney shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support.

If the district attorney determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the district attorney may notify the board, the obligor, and the State Department of Social Services in a format prescribed by the State Department of Social Services that the obligor is not in compliance.

The State Department of Social Services may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The State Department of Social Services may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred by the department in implementing this section. The

boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The State Department of Social Services and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (*l*).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the State Department of Social Services and the Franchise Tax Board that will require the State Department of Social Services and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

SEC. 97. Section 14105.41 of the Welfare and Institutions Code, as amended by Section 12 of Chapter 723 of the Statutes of 1992, is amended to read:

14105.41. (a) For the purpose of adding drugs to, or deleting drugs from, the Medi-Cal drug formulary as described in Section 14105.4, whether pursuant to a petition or by the department independent of a petition, all of the requirements of the Administrative Procedure Act contained in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall be applicable except that the requirements of subdivision (a) of Section 11340.7 and subdivision

(a) of Section 11346.9 of the Government Code shall be deemed to have been complied with if the department does all of the following:

(1) Upon receipt of a petition requesting the addition of a drug to, or the deletion of a drug from, the Medi-Cal drug formulary, the department shall notify the petitioner directly and in writing of the receipt of the petition and shall, within 30 days, either return the petition as incomplete or schedule the petition for public hearing, unless the public hearing is not required pursuant to Section 14105.9.

(2) Notifies each petitioner directly and in writing of its decision regarding the addition of a drug product to, or deletion of a drug product from, the formulary and shall state the reason or reasons for its decision and the specific regulatory criteria that are the basis of the department's decision.

(3) Prepares and submits to the Office of Administrative Law with the adopted regulation all of the following for each drug which the department has decided to add to, or delete from, the Medi-Cal drug formulary:

(A) A brief summary of the comments submitted. For the purpose of this section, "comments" shall mean the major points raised in testimony which specifically address the regulatory criteria upon which the department is authorized, pursuant to subdivision (e) of Section 14105.4, to base a decision to add or delete a drug from the formulary.

(B) The recommendation of the Medical Therapeutic and Drug Advisory Committee.

(C) The decision of the department.

(D) A statement of the reason and the specific regulatory criteria that are the basis of the department's decision.

(b) Any additional information provided to the department during the posting of revisions to the proposed regulation shall be responded to by the department directly and in writing to the originator. That response shall notify the originator whether the additional information has resulted in a changed decision.

(c) For the purpose of review by the court, if any, and review and approval by the Office of Administrative Law of changes to the Medi-Cal drug formulary adopted by the department, each drug added to, or deleted from, the formulary shall be considered to be a separate regulation and shall be severable from all other additions or deletions of drugs contained in the rulemaking file.

(d) This section shall be applicable to any Medi-Cal drug formulary regulation package filed with the Office of Administrative Law on or after January 1, 1997.

(e) This section shall become operative on January 1, 1997.

SEC. 98. (a) Except as provided in subdivision (b), this act shall be operative on July 1, 1997.

(b) (1) Sections 9, 9.2, 9.4, 9.6, 15, 15.1, 15.3, 15.5, 15.6, 15.7, 15.8, 24, 57, 58, 64, 64.4, 65, 65.4, 71, 72, 72.4, 78, 82, 95.5, 97.1, and 97.2 shall be operative on January 1, 1996.

(2) Section 97 shall be operative on January 1, 1997.

(3) If Section 443.37 of the Health and Safety Code is repealed before July 1, 1997, then Section 59 of this act shall not become operative.

SEC. 98.3. Section 15.9 of this bill incorporates amendments to Section 11350 of the Government Code proposed by both this bill and SB 452. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 11350 of the Government Code, and (3) this bill is enacted after SB 452, in which case Section 15.8 of this bill shall not become operative.

SEC. 98.5. Section 95.5 of this bill incorporates amendments to Section 11350.6 of the Welfare and Institutions Code proposed by AB 257. It shall only becomes operative if (1) this bill and AB 257 are enacted and become effective on January 1, 1996, (2) this bill and AB 257 amend Section 11350.6 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 257, in which case Section 95 of this bill shall not become operative.

SEC. 99. Section 96 of this bill incorporates amendments to Section 11350.6 of the Welfare and Institutions Code proposed by both this bill and AB 257. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 11350.6 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 257, in which case Section 95 of this bill shall not become operative.

SEC. 100. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 939

An act to amend Sections 10082, 10083, 10086, 10089, and 10091 of, and to repeal Section 10089.1 of, the Insurance Code, relating to earthquake insurance.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 10082 of the Insurance Code is amended to read:

10082. (a) The offer required by Section 10081 shall include coverage against risk of loss or damage from the peril of earthquake, in accordance with the minimum coverages required by subdivisions (a) and (b) of Section 10089.

(b) The earthquake coverage shall be in accordance with the insurer's rules and rating plan, provided, however, that nothing contained in this chapter shall require an insurer to issue a policy of residential property insurance except in accordance with the insurer's usual underwriting standards. However, such standard shall not permit an insurer to provide a policy of residential property insurance unless the offer of coverage required by this chapter is made.

SEC. 2. Section 10083 of the Insurance Code is amended to read:

10083. (a) The offer of coverage required by Section 10081 may be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy. If the offer of coverage is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or on the application. The offer of earthquake coverage shall contain the following language in at least 10-point bold type face:

YOUR POLICY DOES NOT PROVIDE COVERAGE AGAINST THE PERIL OF EARTHQUAKE.

CALIFORNIA LAW REQUIRES THAT EARTHQUAKE COVERAGE BE OFFERED TO YOU AT YOUR OPTION.

WARNING: THESE COVERAGES MAY DIFFER SUBSTANTIALLY FROM AND PROVIDE LESS PROTECTION THAN THE COVERAGE PROVIDED BY YOUR HOMEOWNERS' INSURANCE POLICY. THERE ARE EXCLUSIONS AND LIMITATIONS SUCH AS OUTBUILDINGS, SWIMMING POOLS, MASONRY FENCES, AND MASONRY CHIMNEYS. THIS DISCLOSURE FORM CONTAINS ONLY A GENERAL DESCRIPTION OF COVERAGES AND IS NOT PART OF YOUR EARTHQUAKE INSURANCE POLICY. ONLY THE SPECIFIC PROVISIONS OF YOUR POLICY WILL DETERMINE WHETHER A PARTICULAR LOSS IS COVERED AND, IF SO, THE AMOUNT PAYABLE.

THE COVERAGE, SUBJECT TO POLICY PROVISIONS, MAY BE PURCHASED AT ADDITIONAL COST ON THE FOLLOWING TERMS:

(A) AMOUNT OF DWELLING COVERAGE: _____

(B) APPLICABLE DEDUCTIBLE: _____ IF YOUR LOSS IS BELOW THIS AMOUNT, YOU MAY NOT RECEIVE ANY PAYMENT FROM YOUR COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE MARKET VALUE OF YOUR COVERAGE, THE INSURED VALUE OF YOUR COVERAGE, OR THE REPLACEMENT VALUE OF YOUR COVERAGE.

(C) CONTENTS COVERAGE: _____

IF YOUR LOSS DOES NOT EXCEED THE DEDUCTIBLE FOR THE DWELLING, YOU WILL NOT RECEIVE ANY PAYMENT FOR THIS COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE AMOUNT YOU RECEIVE PURSUANT TO THIS COVERAGE.

(D) ADDITIONAL LIVING EXPENSES: _____

(E) RATE OR PREMIUM: _____

YOU MUST ASK THE COMPANY TO ADD EARTHQUAKE COVERAGE WITHIN 30 DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR IT SHALL BE CONCLUSIVELY PRESUMED THAT YOU HAVE NOT ACCEPTED THIS OFFER.

THIS COVERAGE SHALL BE EFFECTIVE ON THE DAY YOUR ACCEPTANCE OF THIS OFFER IS RECEIVED BY US.

When the insurer, agent, or broker establishes delivery of the disclosure form by obtaining the signature of the applicant or insured, or when an insurer, agent, or broker provides the applicant with the disclosure form and the applicant does not return a signed acknowledgment of receipt within 60 days of the date it was provided, there shall be a conclusive presumption that the insurer, agent, or broker has complied with the disclosure requirements of this section.

(b) The offer may contain additional provisions not in conflict with or in derogation of the foregoing.

(c) Use of the language prescribed by this section shall constitute compliance with the requirements of Section 10081 by an insurer subject thereto.

SEC. 3. Section 10086 of the Insurance Code is amended to read:

10086. (a) If an offer of earthquake coverage is accepted, the coverage shall be continued at the applicable rates and conditions for the policy term, provided the policy of residential property insurance is not terminated by the named insured or insurer.

(1) At any renewal, an insurer may modify the terms and conditions of an existing policy, rider, or endorsement providing coverage against loss or damage caused by the peril of earthquake if the modified terms and conditions provide the minimum coverages required by Section 10089.

(2) An insurer that modifies the terms and conditions of an existing policy, rider, or endorsement shall provide the insured with the renewal notice in a stand-alone disclosure document stating the changes in the terms and conditions of the insured's existing policy, rider, or endorsement. Proof of mailing of the disclosure document by first-class mail to a named insured at the mailing address shown on the policy or application creates a conclusive presumption that the disclosure document was provided. The disclosure shall include the following statement in 14-point boldface type:

THE COVERAGE IN THE POLICY WE ARE OFFERING YOU WITH THIS RENEWAL HAS BEEN REDUCED, AND SUBSTANTIALLY DIFFERS FROM THE COVERAGES PROVIDED BY YOUR HOMEOWNERS' POLICY. INSURANCE COMPANIES ARE ALLOWED TO RENEW EARTHQUAKE INSURANCE POLICIES WITH COVERAGE THAT IS REDUCED FROM THE COVERAGE YOU PREVIOUSLY PURCHASED. YOU MAY REQUEST A SAMPLE COPY OF THIS NEW POLICY TO REVIEW PRIOR TO MAKING A DECISION TO ACCEPT THIS RENEWAL, AND WE WILL MAIL OR DELIVER IT TO YOU WITHIN 14 DAYS OF YOUR REQUEST. A REQUEST FOR THE SAMPLE COPY SHALL NOT CHANGE OR EXTEND THE POLICY EXPIRATION DATE SPECIFIED IN THE RENEWAL NOTICE. A SUMMARY OF THE CHANGES IS INCLUDED WITH THIS NOTICE.

The commissioner shall approve the form of the summary at the time he or she approves the policy. The summary shall include the information contained in subdivision (a) of Section 10083, and may be included with the renewal notice in standard type.

The commissioner may approve substantially similar disclosure forms if necessary to accurately disclose relevant information to the policyholder. The commissioner may also approve disclosure forms substantially similar to the disclosure statement required by Section 10083 if necessary to accurately disclose relevant information to the policyholder.

(b) If the offer is not accepted, the insurer or any affiliated insurer shall be required on an every other year basis to offer earthquake coverage in connection with any continuation, renewal, or reinstatement of the policy following any lapse thereof, or with respect to any other policy that extends, changes, supersedes, or replaces the policy of residential property insurance. Nothing in this section shall preclude the named insured from terminating the earthquake coverage at any time.

SEC. 4. Section 10089 of the Insurance Code is amended to read:

10089. (a) At a minimum, an offer of coverage of loss or damage caused by the peril of earthquake pursuant to Section 10081 shall include the following coverages: (1) dwelling, not including outbuildings, appurtenant structures, swimming pools, masonry fences and walls not necessary for the structural integrity of the dwelling, walkways and patios not necessary for regular ingress or egress from the dwelling, awnings or other patio coverings, decorative or artistic features including plaster if other covering would be more cost-effective, landscaping, or masonry chimneys, provided that the policy covers replacement of a damaged masonry chimney with a nonmasonry, earthquake resistant chimney. An insurer that provides earthquake coverage for the dwelling that is narrower than coverage provided under the policy of residential

property insurance shall, upon approval of the commissioner, establish the premium for the earthquake coverage in a manner that reflects the exclusion of those items not covered by the earthquake policy, rider, or endorsement; (2) contents coverage either in an amount not less than 10 percent of the amount of the covered dwelling loss, or in an amount not less than five thousand dollars ($5,000), provided that if the underlying policy of residential property insurance does not cover structural loss, the amount of contents coverage after deductible shall be not less than five thousand dollars ($5,000). The insurer shall elect at the time the insurer files its rate application with the commissioner which of the two contents coverages it will use to satisfy the requirements of this chapter. Upon election, the option shall be required to be offered to every policyholder who receives an offer of earthquake coverage pursuant to this chapter. In the case of either coverage, the insurer may exclude from coverage glassware, china, porcelain, or ceramic items, artwork, or other decorative items ; and (3) additional living expenses of an amount no less than one thousand five hundred dollars ($1,500) to cover expenses while the residential dwelling remains uninhabitable due to physical loss or damage from the peril of earthquake.

(b) Coverages provided in paragraphs (1) and (2) of subdivision (a) shall not contain a deductible of more than 15 percent of coverage provided for the dwelling.

(c) The commissioner may approve rate applications that allow the insurer to offer policies providing coverage other than the coverage specified in this section provided that at least one coverage offered meets the criteria provided in this section.

(d) In the case of a residential dwelling which is not owner occupied, the minimum coverage for additional living expenses may be waived by the applicant or policyholder, provided the insurer gives notice to the applicant or policyholder that coverage for additional living expenses is offered but may be waived, and the waiver is in writing.

SEC. 5. Section 10089.1 of the Insurance Code is repealed.

SEC. 6. Section 10091 of the Insurance Code is amended to read:

10091. Unless the provision or context otherwise requires, the following definitions shall govern the construction of this chapter:

(a) "Association," "industry placement facility," or "facility," means a joint reinsurance association (the California FAIR Plan Association), formed by insurers licensed to write and engaged in writing basic property insurance within this state to assist persons in securing basic property insurance and to formulate and administer a program for the equitable apportionment among such insurers of such basic property insurance.

(b) "Commissioner" means the Insurance Commissioner of this state.

(c) "Basic property insurance" means insurance against direct loss to real or tangible personal property at a fixed location in those geographic or urban areas designated by the commissioner, from perils insured under the standard fire policy and extended coverage endorsement and vandalism and malicious mischief and such other insurance coverages as may be added with respect to such property by the industry placement facility with the approval of the commissioner or by the commissioner, but shall not include insurance on automobile or farm risks.

For the purposes of earthquake coverage that is provided as a component of basic property insurance, the association shall sell only the policy described in Section 10089. In force policies of basic property insurance that include earthquake coverage shall be renewed with the coverage specified in Section 10089, and the association shall comply with the notice requirements of paragraph (2) of subdivision (a) of Section 10086.

(d) "Inspection bureau" means the organization or organizations designated by the association with the approval of the commissioner to make inspections to determine the condition of the properties for which basic property insurance is sought and to perform such other duties as may be authorized by the association.

(e) "Premiums written" means gross direct premiums charged with respect to property in this state on all policies of basic property insurance and the basic property insurance premium components of all multiperil policies, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

(f) "Insurer" means any person who undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event, and shall include reciprocals and interinsurance exchanges.

CHAPTER 940

An act to amend Sections 8670.3, 8670.28, 8670.37.5, 8670.48, 8670.49, and 8670.62 of, and to add Section 8670.17.2 to, the Government Code, and to amend Section 46012 of the Revenue and Taxation Code, relating to oil spills, and making an appropriation therefor.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 8670.3 of the Government Code is amended to read:

8670.3. Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) "Barges" means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(c) (1) "Best achievable protection" means that the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (1) the protection provided by the measures, (2) the technological achievability of the measures, and (3) the cost of the measures.

(2) It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) "Local government" means any chartered or general law city, chartered or general law county, or any city and county.

(f) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this chapter, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility." For the purposes of this chapter, a small craft refueling dock is not a "marine facility."

(g) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(h) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(i) "Mobile transfer unit" means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(j) "Nonpersistent oil" means a petroleum-based oil, such as gasoline, diesel, or jet fuel, which evaporates relatively quickly. Specifically, it is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(k) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(*l*) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(m) (1) "Owner" or "operator" means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand.

(D) An entity of the state or local government which acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge or oil into marine waters.

(2) "Owner" or "operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) "Operator" does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(n) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(o) "Pipeline" means any pipeline used at any time to transport oil.

(p) "Responsible party" or "party responsible" means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(q) "Small craft" means waterborne craft, other than a tanker or barge, which is less than 20 meters in length.

(r) "Small craft refueling dock" means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

(2) Has a total usable tank storage capacity not exceeding 75,000 gallons.

(s) "Small marine fueling facility" means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, which dispenses primarily nonpersistent oil, and may dispense small amounts of persistent oil, primarily to small craft, and meets all of the following criteria:

(A) Has tank storage capacity not exceeding 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(t) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil into marine waters which is not authorized by any federal, state, or local government entity.

(u) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(v) "State oil spill contingency plan" means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(w) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(x) "Vessel" means a tanker or barge as defined in this section.

(y) "Vessel carrying oil as secondary cargo" means a tanker or barge that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

SEC. 1.5. Section 8670.3 of the Government Code is amended to read:

8670.3. Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) "Barges" means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(c) (1) "Best achievable protection" means that the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (1) the protection provided by the measures, (2) the technological achievability of the measures, and (3) the cost of the measures.

(2) It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) "Local government" means any chartered or general law city, chartered or general law county, or any city and county.

(f) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this chapter, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility." For the purposes of this chapter, a small craft refueling dock is not a "marine facility."

(g) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(h) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(i) "Mobile transfer unit" means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(j) "Nonpersistent oil" means a petroleum-based oil, such as gasoline, diesel, or jet fuel, which evaporates relatively quickly. Specifically, it is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(k) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(*l*) "Oil spill cleanup agent" means a chemical, or any other substance, used for removing, dispersing, or otherwise cleaning up oil or any residual products of petroleum in, or on, any of the waters of the state.

(m) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(n) (1) "Owner" or "operator" means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand.

(D) An entity of the state or local government which acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) "Owner" or "operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) "Operator" does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(o) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(p) "Pipeline" means any pipeline used at any time to transport oil.

(q) "Responsible party" or "party responsible" means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(r) "Small craft" means waterborne craft, other than a tanker or barge, which is less than 20 meters in length.

(s) "Small craft refueling dock" means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

(2) Has a total usable tank storage capacity not exceeding 75,000 gallons.

(t) "Small marine fueling facility" means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, which dispenses primarily nonpersistent oil, and may dispense small amounts of

persistent oil, primarily to small craft, and meets all of the following criteria:

(A) Has tank storage capacity not exceeding 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(u) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil into marine waters which is not authorized by any federal, state, or local government entity.

(v) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(w) "State oil spill contingency plan" means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(x) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(y) "Vessel" means a tanker or barge as defined in this section.

(z) "Vessel carrying oil as secondary cargo" means a tanker or barge that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

SEC. 2. Section 8670.17.2 is added to the Government Code, to read:

8670.17.2. (a) The administrator shall adopt regulations governing tugboat escorts for tankers and barges entering, leaving, or navigating in the harbors of the state. The regulations shall be adopted, and thereafter periodically revised, to ensure the best achievable protection of the public health and safety and the environment.

(b) The regulations adopted pursuant to subdivision (a) shall include, but not be limited to, a determination of the circumstances under which tankers and barges are required to be accompanied by a tugboat or tugboats of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbors of the state. In making that determination, the administrator shall be guided by the recommendations of the harbor safety committees established pursuant to Section 8670.23.

(c) The administrator may adopt regulations which differ from the recommendations of the harbor safety committees only after a public hearing. If the administrator proposes to adopt regulations which require the use of tugboat escorts in fewer instances in the harbors of San Francisco, San Pablo, and Suisun Bays than that which is recommended by the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall, in a public

hearing, adopt findings, based on substantial evidence, that the proposed regulations provide adequate protection and are consistent with the purposes of this chapter.

(d) A public hearing held in accordance with Section 11346.8 shall satisfy the public hearing requirement of subdivision (d) of this section.

(e) The Legislature hereby finds and declares that the appropriate use of tugboat escorts can improve vessel safety, particularly in the harbors of San Francisco, San Pablo, and Suisun Bays, and that the regulations concerning tugboat escorts in those harbors shall be adopted as quickly as practicable and may be adopted before the adoption of all other regulations required by this section.

SEC. 3. Section 8670.28 of the Government Code is amended to read:

8670.28. (a) The administrator, taking into consideration the marine facility or vessel contingency plan requirements of the national and state contingency plans, the State Lands Commission, the State Fire Marshal, and the California Coastal Commission shall adopt and implement regulations and guidelines governing the adequacy of oil spill contingency plans to be prepared and implemented under this section. All regulations and guidelines shall be developed in consultation with the State Interagency oil spill Committee, and the oil spill Technical Advisory Committee, and shall be consistent with the state oil spill contingency plan and not in conflict with the National Contingency Plan. The administrator shall hold a public hearing on the regulations. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources. The regulations and guidelines shall permit the development, application, and use of blanket contingency plans for similar vessels, pipelines, terminals, and facilities within a single company or organization, and across companies and organizations. The regulations and guidelines shall, at a minimum, ensure all of the following:

(1) All areas of the marine waters of the state are at all times protected by prevention, response, containment, and cleanup equipment and operations. For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(2) Standards set for response, containment, and cleanup equipment and operations are maintained and regularly improved to protect the resources of the state.

(3) All appropriate personnel employed by operators required to have a contingency plan receives training in oil spill response and cleanup equipment usage and operations.

(4) Each contingency plan for a vessel or marine facility demonstrates that the marine facility or vessel has plans in place, including appropriate financial or contractual arrangements for all

necessary equipment and services, for the response, containment, and cleanup of a reasonable worst case oil spill scenario for each part of the coast the plan addresses.

(5) Each contingency plan demonstrates that all protection measures are being taken to reduce the possibility of an oil spill occurring as a result of the operation of the marine facility or vessel. The protection measures shall include, but not be limited to, response to disabled tankers and an identification of those measures taken to comply with requirements of Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(6) Each contingency plan identifies the types of equipment that can be used, the location of the equipment, and the time taken to deliver the equipment.

(7) Each marine facility conducts a hazard and operability study to identify the hazards associated with the operation of the facility, including the use of the facility by vessels, due to operating error, equipment failure, and external events. For the hazards identified in the hazard and operability studies, the facility shall conduct an offsite consequence analysis which, for the most likely hazards, assumes pessimistic water and air dispersion and other adverse environmental conditions.

(8) Each contingency plan contains a list of contacts to call in the event of a drill, threatened discharge of oil, or discharge of oil.

(9) Each marine facility identifies in its contingency plan the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.

(10) Standards for determining a worst case oil spill.

(11) Each contingency plan includes a timetable for implementing the plan.

(12) Each contingency plan specifies an agent for service of process. The agent shall be located in this state.

(b) The regulations and guidelines shall also include provisions for public review and comment on submitted contingency plans prior to approval.

(c) The regulations shall specifically address the types of equipment that will be necessary, the maximum time that will be allowed for deployment, the maximum distance to cooperating response entities, the amounts of dispersant, and the maximum time required for application, should the use of dispersants be approved. Upon a determination by the administrator that booming is appropriate at the site and necessary to provide best achievable protection, regulations shall require that vessels engaged in lightering operations be boomed prior to the commencement of operations.

(d) The administrator shall adopt regulations and guidelines for oil spill contingency plans with regard to mobile transfer units, small marine fueling facilities, and vessels carrying oil as secondary cargo

that acknowledge the reduced risk of damage from oil spills from those units, facilities, and vessels while maintaining the best achievable protection for the public health and safety and the environment.

(e) The regulations adopted pursuant to subdivision (d) shall be exempt from review by the Office of Administrative Law. Subsequent amendments and changes to the regulations shall not be exempt from Office of Administrative Law review.

SEC. 4. Section 8670.37.5 of the Government Code is amended to read:

8670.37.5. (a) The administrator shall establish a network of rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters. The administrator shall consider all feasible management alternatives for operation of the network.

(b) The first rescue and rehabilitation station established pursuant to this section shall be located within the sea otter range on the central coast. The administrator shall establish regional oiled wildlife rescue and rehabilitation facilities in the Los Angeles Harbor area, the San Francisco Bay area, the San Diego area, the Monterey Bay area, the Humboldt County area, and the Santa Barbara area, and may establish those facilities in other coastal areas of the state as the administrator determines to be necessary. One or more of the oiled wildlife rescue and rehabilitation stations shall be open to the public for educational purposes and shall be available for marine wildlife health research. Wherever possible in the establishment of these facilities, the administrator shall improve existing authorized marine mammal rehabilitation facilities and may expand or take advantage of existing educational or scientific programs and institutions for oiled wildlife rehabilitation purposes. Expenditures shall be reviewed by the agencies and organizations specified in subdivision (c).

(c) The administrator shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Coastal Commission, the Marine Mammal Center, and the International Bird Rescue Center in the design, planning, construction, and operation of the rescue and rehabilitation stations. All proposals for the rescue and rehabilitation stations shall be presented before a public hearing prior to the construction and operation of any rehabilitation station, and, upon completion of the coastal protection element of the state oil spill contingency plan, shall be consistent with the coastal protection element.

(d) The administrator may enter into agreements with nonprofit organizations to establish and equip wildlife rescue and rehabilitation stations and to ensure that they are operated in a professional manner in keeping with the pertinent guidance documents issued by the

Office of Oil Spill Prevention and Response in the Department of Fish and Game. The implementation of any such agreement shall not constitute a state public works project. Any such agreement shall be deemed a contract for wildlife rehabilitation as authorized by Section 8670.62.

(e) (1) Five hundred thousand dollars ($500,000) of federal escrow funds received by the state pursuant to Section 8(g) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. Sec. 1337(g)), shall, upon approval in the 1991–92 Budget Act, be appropriated or allocated for appropriation, as the case may be, from the Federal Trust Fund, each year for three years for the purposes described in subdivision (a).

(2) Additional funding shall be provided for the purposes described in subdivision (a) from four years of interest earned on the funds deposited in the Oil Spill Response Trust Fund as authorized in subdivision (*l*) of Section 8670.48 or through the Budget Act process upon the request by the administrator.

(f) In the event of a spill, the responsible party may request that the administrator perform the rescue and rehabilitation of oiled wildlife required of the responsible party pursuant to this chapter if the responsible party and the administrator enter into an agreement for the reimbursement of the administrator's costs incurred in taking the requested action. If the administrator performs the rescue and rehabilitation of oiled wildlife, the administrator shall primarily utilize the network of rescue and rehabilitation stations established pursuant to subdivision (a), unless more immediate care is required. Any of those activities conducted pursuant to this section or Section 8670.56.5 or 8670.61.5 shall be performed under the direction of the administrator. Nothing in this subdivision shall be construed as removing the responsible party from liability for the costs of, nor the responsibility for, the rescue and rehabilitation of oiled wildlife, as established by this chapter. Nothing in this subdivision shall be construed as prohibiting an owner or operator from retaining, in a contingency plan prepared pursuant to this article, wildlife rescue and rehabilitation services different from the rescue and rehabilitation stations established pursuant to this section.

(g) (1) The administrator shall appoint a rescue and rehabilitation advisory board to advise the administrator regarding operation of the network of rescue and rehabilitation stations established pursuant to subdivision (a), including the economic operation and maintenance of the network. For the purpose of assisting the administrator in determining what constitutes the best achievable treatment for oiled wildlife, the advisory board shall provide recommendations to the administrator on the care achieved by current standard treatment methods, new or alternative treatment methods, the costs of treatment methods, and any other information which the advisory board believes that the administrator might find useful in making that determination. The administrator

shall consult the advisory board in preparing the administrator's submission to the Legislature pursuant to subparagraph (A) of paragraph (2) of subdivision (*l*) of Section 8670.48. The administrator shall present the recommendations of the advisory board to the Oil Spill Technical Advisory Committee created pursuant to Article 8 (commencing with Section 8670.54), upon the request of the committee.

(2) The advisory board shall consist of a balance between representatives of the oil industry, wildlife rehabilitation organizations, and academia. One academic representative shall be from a veterinary school within this state. The United States Fish and Wildlife Service and the National Marine Fisheries Service shall be requested to participate as ex-officio members.

(3) (A) The Legislature hereby finds and declares that since the administrator may rely on the expertise provided by the volunteer members of the advisory board and may be guided by their recommendations in making decisions that relate to operation of the network of rescue and rehabilitation stations, those members should be entitled to the same immunity from liability that is provided other public employees.

(B) Members of the advisory board, while performing functions within the scope of advisory board duties, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the advisory board.

SEC. 5. Section 8670.48 of the Government Code is amended to read:

8670.48. (a) (1) A uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), shall be imposed upon every person owning petroleum products at the time the petroleum products are received at a marine terminal within this state by means of a vessel from a point of origin outside this state. The fee shall be remitted to the State Board of Equalization by the terminal operator on the 25th day of each month based upon the number of barrels of petroleum products received during the preceding month.

(2) Every owner of petroleum products is liable for the fee until it has been paid to the state, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(b) Every operator of a pipeline shall also pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), transported into the state by means of a pipeline operating across, under, or through the marine waters of the

state. The fee shall be paid on the 25th day of each month based upon the number of barrels of petroleum products so transported into the state during the preceding month.

(c) (1) Every operator of a refinery shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), received at a refinery within the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of crude oil so received during the preceding month.

(2) The fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer as defined in paragraph (3). The board shall not identify a company as exempt from the fee requirements of this section if that company was reorganized, sold, or otherwise modified with the intent of circumventing the requirements of this section.

(3) For purposes of this chapter, "independent crude oil producer" means any person or entity producing crude oil within this state who performs no refining of crude oil into product, and who possesses or owns no retail gasoline marketing facilities.

(d) Every marine terminal operator shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), that is transported from within this state by means of marine vessel to a destination outside this state.

(e) Every operator of a pipeline shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), transported out of the state by pipeline.

(f) (1) The fees required pursuant to this section shall be collected during any period that the administrator determines that either the amount in the fund is less than or equal to 95 percent of the amount specified in paragraph (1) of subdivision (h), or additional moneys are required to pay for the purposes specified in subdivision (k).

(2) Whenever the administrator, in consultation with the State Board of Equalization, estimates that the amount in the fund will reach the amount specified in paragraph (1) of subdivision (h), and the money in the fund is not required for the purposes specified in subdivision (k), the administrator shall direct the State Board of Equalization to cease collecting the fee. In no event shall the fee cease to be imposed if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the

continued imposition of the fee is not required for the purposes specified in paragraph (7) of subdivision (k).

(3) The administrator, in consultation with the State Board of Equalization, shall set the amount of the oil spill response fees. The oil spill response fees shall be imposed on all feepayers in the same amount. The administrator shall not set the amount of the fee at less than twenty-five cents ($0.25) for each barrel of petroleum products or crude oil, unless the administrator finds that the assessment of a lesser fee will cause the fund to reach the designated amount within four months. The fee shall not be less than twenty-five cents ($0.25) for each barrel of petroleum products or crude oil if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the money in the fund is not required for the purposes specified in paragraph (7) of subdivision (k).

(g) The fees imposed by subdivisions (d) and (e) shall be imposed in any calendar year beginning the month following the month when the total cumulative year-to-date barrels of crude oil transported outside the state by all feepayers by means of vessel or pipeline exceeds 6 percent by volume of the total barrels of crude oil and petroleum products subject to oil spill response fees under subdivisions (a), (b), and (c) for the prior calendar year.

(h) For purposes of this chapter, "designated amount" means an amount equal to one hundred nine million seven hundred fifty thousand dollars ($109,750,000), subject to the following:

(1) Fifty-four million eight hundred seventy-five thousand dollars ($54,875,000) shall be retained in the fund as cash.

(2) Fifty-four million eight hundred seventy-five thousand dollars ($54,875,000) shall be immediately accessible in the fund in the form of financial security obtained by the Treasurer as authorized by subdivision (p).

(3) Commencing June 30, 2003, the amounts designated in this subdivision shall be adjusted for inflation, in accordance with an index that the administrator may reasonably choose.

(i) (1) The administrator shall authorize refunds of any money collected, for reporting periods after January 31, 1991, in excess of the amount specified in paragraph (1) of subdivision (h) and any amounts determined by the administrator to be necessary to provide for any of the purposes specified in paragraphs (1) to (6), inclusive, of subdivision (k) and, if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, any amounts the Treasurer has certified to the administrator are required for the purposes specified in paragraph (7) of subdivision (k). The board, as directed by the administrator and in

accordance with Section 46653 of the Revenue and Taxation Code, shall refund the excess amount of fees collected to each feepayer who paid the fee to the state, in proportion to the amount that each feepayer paid into the fund during the preceding 12 monthly reporting periods in which there was a fee due, including the month in which the fund exceeded the specified amount, and only for those periods which commenced on or after January 31, 1991. If the total amount of money in the fund exceeds the amount specified in this subdivision by 10 percent or less, refunds need not be ordered by the administrator. Nothing in this section shall require the refund of excess fees as provided in this subdivision more frequently than once each year.

(2) Any amount of fees collected in excess of the specified amount for periods prior to February 1, 1991, shall be refunded as follows:

(A) First, to feepayers who paid oil spill response fees under subdivision (d) or (e) of Section 8670.48 of the Government Code as added by Chapter 1248 of the Statutes of 1990.

(B) Second, to feepayers in proportion to the amount each feepayer paid into the fund for the period from September 24, 1990, to January 31, 1991, inclusive, less any amounts refunded pursuant to paragraph (1).

(j) The board shall collect the fee and adopt regulations implementing the fee collection program. All fees collected pursuant to this section shall be deposited in the Oil Spill Response Trust Fund.

(k) The fee described in this section shall be collected solely for any of the following purposes:

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into marine waters, including damage assessment costs, and wildlife rehabilitation as provided in Section 8670.61.5.

(2) To provide emergency loans and to cover response and cleanup costs and other damages suffered by the state or other persons or entities from oil spills into marine waters which cannot otherwise be compensated by responsible parties or the federal government.

(3) To pay claims for damages pursuant to Section 8670.51.

(4) To pay claims for damages, except for damages described in paragraph (7) of subdivision (g) of Section 8670.56.5, pursuant to Section 8670.51.1.

(5) To pay for the arrangement of fifty-four million eight hundred seventy-five thousand dollars ($54,875,000), adjusted for inflation as specified in paragraph (3) of subdivision (h), of financial security as authorized by subdivision (p).

(6) To pay indemnity and related costs and expenses as authorized by Section 8670.56.6.

(7) To pay principal, interest, premium, if any, and fees, charges, and costs of any kind imposed in connection with funds borrowed pursuant to Article 7.5 (commencing with Section 8670.53.1).

(8) To pay for the costs of rescue, medical treatment, rehabilitation, and disposition of oiled wildlife, as incurred by the network of oiled wildlife rescue and rehabilitation stations created pursuant to Section 8670.37.5.

(*l*) (1) The interest that the state earns on the funds deposited into the Oil Spill Response Trust Fund shall be deposited in the fund and shall be used to maintain the fund at the designated amount. Interest earned for four years commencing on July 1, 1994, on funds deposited pursuant to paragraph (1) of subdivision (h) in the Oil Spill Response Trust Fund, as determined jointly by the Controller and the Director of Finance, shall be available upon appropriation by the Legislature in the Budget Act to establish, equip, operate, and maintain the network of rescue and rehabilitation stations for oiled wildlife as described in Section 8670.37.5 and to support technology development and research related to oiled wildlife care. Interest earned on the financial security portion of the fund, pursuant to paragraph (2) of subdivision (h), shall not be available for this purpose. If the fund exceeds the designated amount, the interest not needed to equip, operate, and maintain the network of rescue and rehabilitation stations, or for appropriate technology development and research regarding oiled wildlife care, shall be deposited into the Oil Spill Prevention and Administration Fund, for the purposes authorized by Article 6 (commencing with Section 8670.38).

(2) (A) For the fiscal year beginning July 1, 1998, and each year thereafter for five years, consistent with this article, the administrator shall submit for appropriation, through the Governor's budget, an amount up to one million three hundred thousand dollars ($1,300,000), of the interest earned on the funds deposited into the Oil Spill Response Trust Fund, for the purpose of equipping, operating, and maintaining the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5 and for support of technology development and research related to oiled wildlife care. Through the budget process, the Legislature shall review and approve the appropriation. The remaining interest shall be deposited into the Oil Spill Prevention and Administration Fund, pursuant to paragraph (1).

(B) The administrator shall report to the Legislature not later than June 30, 2002, on the progress and effectiveness of the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5, and the adequacy of the Oil Spill Response Trust Fund to meet the purposes for which it was established.

(C) Subparagraph (A) shall remain in effect only until June 30, 2003, and as of that date shall become inoperative and all of the interest earned on the funds deposited into the Oil Spill Response Trust Fund shall then be deposited into the Oil Spill Prevention and Administration Fund created pursuant to Article 6 (commencing with Section 8670.38), unless an earlier enacted statute, which is

chaptered on or before June 30, 2003, otherwise provides for the disposition of the interest.

(D) At the administrator's request, the funds made available pursuant to this paragraph may be directly appropriated to a suitable program for wildlife health and rehabilitation within a school of veterinary medicine within this state, provided that an agreement exists, consistent with this chapter, between the administrator and an appropriate representative of the program for carrying out this purpose. The administrator shall attempt to have such an agreement in place at all times. The agreement shall ensure that the training of, and the care provided by, the program staff are at levels that are consistent with those standards generally accepted within the veterinary profession.

(E) The funds made available pursuant to this paragraph shall not be considered an offset to any other state funds appropriated to the program, the program's associated school of veterinary medicine, or the program's associated college or university, and the funds shall not be used for any other purpose. If an offset does occur or the funds are used for an unintended purpose, expenditure of any appropriation of funds pursuant to this paragraph may be terminated by the administrator and the administrator may request a reappropriation to accomplish the intended purpose. The administrator shall annually review and approve the proposed uses of any funds made available pursuant to this paragraph.

(m) The Legislature finds and declares that effective response to oil spills requires that the state have available sufficient funds in a response fund. The Legislature further finds and declares that maintenance of that fund is of utmost importance to the state and that the moneys in the fund shall be used solely for the purposes specified in subdivision (k).

(n) For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(o) It is the intent of the Legislature, in enacting this section, that the fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer.

(p) The Treasurer shall purchase fifty-four million eight hundred seventy-five thousand dollars ($54,875,000), adjusted for inflation as specified in paragraph (3) of subdivision (h), of financial security which may be drawn upon immediately by the administrator upon making the determinations as required by Section 8670.49. The financial security shall be in a form as described in subdivision (a) of Section 8670.53.3.

(q) Nothing in this section limits the authority of the administrator to raise the oil spill response fees pursuant to Section 8670.48.5 of the Government Code.

SEC. 6. Section 8670.49 of the Government Code is amended to read:

8670.49. (a) Except to pay for the arrangement of the financial security as authorized by paragraph (5) of subdivision (k) and subdivision (p) of Section 8670.48, to pay for the construction, equipping, operation, and maintenance of rescue and rehabilitation facilities, and technology development for oiled wildlife care from interest earned on funds deposited in the fund as authorized by subdivision (*l*) of Section 8670.48, and to pay for the costs of rescue, medical treatment, rehabilitation, and disposition of oiled wildlife, as incurred by the network of oiled wildlife rescue and rehabilitation stations pursuant to subdivision (f) of Section 8670.37.5, the administrator may only expend money from the fund if a discharge of oil into marine waters has occurred and the following determinations have been made:

(1) Except as authorized by Section 8670.51.1, a responsible party does not exist or the responsible party is unable or unwilling to provide adequate and timely cleanup and to pay for the damages resulting from the spill. The administrator shall make a reasonable effort to have the party responsible remove the oil or agree to pay for any actions resulting from the spill that may be required by law, provided that the efforts are not detrimental to fish, plant, animal, or bird life in the affected waters. The reasonable effort of the administrator shall include attempting to access the responsible parties' insurance or other proof of financial responsibility.

(2) Federal oil spill funds are not available or will not be available in an adequate period of time. Notwithstanding this subdivision, the administrator may expend money from the fund for authorized expenditures when a reimbursement procedure is in place to receive reimbursements from federal oil spill funds.

(b) Upon making the determinations specified in subdivision (a), the administrator shall immediately make whatever payments are necessary for responding to, containing, or cleaning up, the spill, including any wildlife rehabilitation required by law and payment of claims pursuant to Sections 8670.51 and 8670.51.1.

SEC. 7. Section 8670.62 of the Government Code is amended to read:

8670.62. (a) Any person who discharges oil into marine waters, upon order of the administrator, shall do all of the following:

(1) Clean up the oil.

(2) Abate the effects of the discharge.

(3) In the case of a threatened discharge, take other necessary remedial action.

(b) Upon failure of any person to comply with a cleanup or abatement order, the Attorney General or a district attorney, at the request of the administrator, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In any such suit, the court shall have

jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(c) Consistent with the state contingency plan, the administrator may expend available money to perform any response; containment; cleanup; wildlife rehabilitation, which includes assessment of resource injuries and damages, or remedial work required pursuant to subdivision (a) which, in the administrator's judgment, is required by the circumstances or the urgency of prompt action required to prevent pollution, nuisance, or injury to the environment of the state. The action may be taken in default of, or in addition to, remedial work by the responsible party or other persons, and regardless of whether injunctive relief is sought. The administrator may perform the work in cooperation with any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the administrator may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish the work. The contracts shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(d) If the discharge is cleaned up, or attempted to be cleaned up, the effects thereof abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharged the oil, or threatened to cause or permit the discharge of the oil within the meaning of subdivision (a), shall be liable to that governmental agency for the reasonable costs actually incurred in cleaning up that waste, abating the effects thereof, or taking other remedial action. The amount of the costs shall be recoverable in a civil action by, and paid to, the applicable governmental agency and the administrator, to the extent the administrator contributed to the cleanup costs from the Oil Spill Response Trust Fund or other available funds.

(e) If, despite reasonable effort by the administrator to identify the party responsible for the discharge of oil or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work must be performed, the administrator shall not be required to issue an order under this section. The absence of a responsible party shall not in any way limit the powers of the administrator under this section.

(f) "Threaten," for purposes of this section, means a condition creating a substantial probability of harm, when the probability and potential extent of harm makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

SEC. 8. Section 46012 of the Revenue and Taxation Code is amended to read:

46012. "Designated amount" means an amount equal to one hundred nine million seven hundred fifty thousand dollars ($109,750,000), subject to the following:

(a) Fifty-four million eight hundred seventy-five thousand dollars ($54,875,000) shall be retained in the Oil Spill Response Trust Fund as cash.

(b) Fifty-four million eight hundred seventy-five thousand dollars ($54,875,000), shall be accessible in the Oil Spill Response Trust Fund in the form of financial security obtained by the Treasurer.

(c) Commencing June 30, 2003, the amounts designated in this section shall be adjusted for inflation as specified in paragraph (3) of subdivision (h) of Section 8670.48 of the Government Code.

SEC. 9. The Legislature hereby finds and declares that this act does not cause any net increase in costs because there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

SEC. 10. Section 1.5 of this bill incorporates amendments to Section 8670.3 of the Government Code proposed by both this bill and SB 1083. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 8670.3 of the Government Code, and (3) this bill is enacted after SB 1083, in which case Section 1 of this bill shall not become operative.

CHAPTER 941

An act to add Chapter 4.5 (commencing with Section 18944.30) to Part 2.5 of Division 13 of the Health and Safety Code, relating to buildings.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Chapter 4.5 (commencing with Section 18944.30) is added to Part 2.5 of Division 13 of the Health and Safety Code, to read:

CHAPTER 4.5. GUIDELINES FOR STRAW-BALE STRUCTURES

Article 1. General Provisions and Definitions

18944.30. (a) The Legislature finds and declares all of the following:

(1) There is an urgent need for low-cost, energy-efficient housing in California.

(2) The cost of conventional lumber-framed housing has risen due to a shortage of construction-grade lumber.

(3) Rice straw is an annually renewable source of cellulose that can be used as an energy-efficient substitute for stud-framed wall construction.

(4) The state has mandated that the burning of rice straw be prohibited as specified in statute by the year 2000 in an annual phased reduction.

(5) As a result of the mandated burning reduction, growers are experimenting with alternative straw management practices. Various methods of straw incorporation into the soil are the most widely used alternatives. The two most common methods are nonflood incorporation and winter flood incorporation. Economically viable off-farm uses for rice straw are not yet available.

(6) Winter flooding of rice fields encourages the natural decomposition of rice straw and provides valuable waterfowl habitat. According to the Central Valley Habitat Joint Venture component of the North American Waterfowl Management Plan, in California's Central Valley, over 400,000 acres of enhanced agricultural lands are needed to restore the depleted migratory waterfowl populations of the Pacific flyway. Flooded rice fields are a key and integral part of the successful restoration of historic waterfowl and shorebird populations.

(7) Winter flooding of rice fields provides significant waterfowl habitat benefits and should be especially encouraged in areas where there is minimal potential to impact salmon as a result of surface water diversions.

(8) An economically viable market for rice straw bales could result from the use of rice straw bales in housing construction.

(9) Existing regulatory requirements are costly and severely restrict the development of straw-bale housing.

(10) Statutory guidelines for the use of straw-bale housing would significantly benefit low-cost housing, agriculture, and fisheries in California.

(b) It is therefore the intent of the Legislature to adopt safety guidelines for the construction of structures including, but not limited to, single-family dwellings that use baled rice straw as a loadbearing or nonloadbearing material, provided that these guidelines shall not be effective within any city or county unless and until the legislative body of the city or county makes an express finding that the application of these guidelines within the city or county is reasonably necessary because of local conditions.

18944.31. (a) Notwithstanding any other provision of law, the guidelines established by this chapter shall not become operative within any city or county unless and until the legislative body of the city or county makes an express finding that the application of these guidelines within the city or county is reasonably necessary because

of local conditions and the city or county files a copy of that finding with the department.

(b) In adopting ordinances or regulations, a city or county may make any changes or modifications in the guidelines contained in this chapter as it determines are reasonably necessary because of local conditions, provided the city or county files a copy of the changes or modifications and the express findings for the changes or modifications with the department. No change or modification of that type shall become effective or operative for any purpose until the finding and the change or modification has been filed with the department.

18944.32. Nothing in this chapter shall be construed as an exemption from Chapter 3 (commencing with Section 5500) of, or Chapter 7 (commencing with Section 6700) of, Division 3 of the Business and Professions Code relative to preparation of plans, drawings, specifications, or calculations under the direct supervision of a licensed architect or civil engineer, for the construction of structures that deviate from the conventional framing requirements for wood-frame construction.

18944.33. For the purposes of this chapter, the following terms are defined as follows:

(a) "Bales" means rectangular compressed blocks of rice straw, bound by strings or wire.

(b) "Department" means the Department of Housing and Community Development.

(c) "Flakes" means slabs of straw removed from an untied bale. Flakes are used to fill small gaps between the ends of stacked bales.

(d) "Laid flat" refers to stacking bales so that the sides with the largest cross-sectional area are horizontal and the longest dimension of this area is parallel with the wall plane.

(e) "Laid on-edge" refers to stacking bales so that the sides with the largest cross-sectional area are vertical and the longest dimension of this area is horizontal and parallel with the wall plane.

(f) "Straw" means the dry stems of cereal grains left after the seed heads have been removed.

18944.34. (a) Subject to the availability of funds, on or before January 1, 2002, the California Building Standards Commission shall transmit, to the department and to the Legislature, a report regarding the implementation of this chapter.

(b) The implementation report shall describe which cities and counties have utilized this chapter, and the number and type of structures that have been built pursuant to local ordinances. The implementation report may include recommendations to amend the guidelines established by this chapter, or any other related matters.

(c) The California Building Standards Commission may accept and use any funds provided or donated for the purposes of this section.

Article 2. Guidelines for Materials

18944.35. (a) Bales shall be rectangular in shape.

(b) Bales used within a continuous wall shall be of consistent height and width to ensure even distribution of loads within wall systems.

(c) Bales shall be bound with ties of either polypropylene string or baling wire. Bales with broken or loose ties shall not be used unless the broken or loose ties are replaced with ties which restore the original degree of compaction of the bale.

(d) The moisture content of bales, at the time of installation, shall not exceed 20 percent of the total weight of the bale. Moisture content of bales shall be determined through the use of a suitable moisture meter, designed for use with baled rice straw or hay, equipped with a probe of sufficient length to reach the center of the bale, and used to determine the average moisture content of five bales randomly selected from the bales to be used.

(e) Bales in loadbearing walls shall have a minimum calculated dry density of 7.0 pounds per cubic foot. The calculated dry density shall be determined after reducing the actual bale weight by the weight of the moisture content.

(f) Where custom-made partial bales are used, they shall be of the same density, same string or wire tension, and, where possible, use the same number of ties as the standard size bales.

(g) Bales of various types of straw, including wheat, rice, rye, barley, oats, and similar plants, as determined by the building official, shall be acceptable if they meet the minimum requirements of this chapter for density, shape, moisture content, and ties.

Article 3. Construction Guidelines

18944.40. (a) Straw-bale walls, when covered with plaster, drywall, or stucco, shall be deemed to have the equivalent fire resistive rating as wood-frame construction with the same wall-finishing system.

(b) Minimum bale wall thickness shall be 13 inches.

(c) Buildings with loadbearing bale walls shall not exceed one story in height, and the bale portion of the loadbearing walls shall not exceed a height-to-width ratio of 5.6:1 (for example, the maximum height for a wall that is 23 inches thick would be 10 feet 8 inches).

(d) The ratio of unsupported wall length to thickness, for loadbearing walls, shall not exceed 15.7:1 (for example, for a wall that is 23 inches thick, the maximum unsupported length allowed is 30 feet).

(e) The allowable vertical load (live and dead load) on top of loadbearing bale walls shall not exceed 400 pounds per square foot, and the resultant load shall act at the center of the wall. Straw-bale

structures shall be designed to withstand all vertical and horizontal loads as specified in the latest edition of the Uniform Building Code.

(f) Foundations shall be sized to accommodate the thickness of the bale wall and the load created by the wall and roof live and dead loads. Foundation or stem walls which support bale walls shall extend to an elevation of not less than 6 inches above adjacent ground at all points. The minimum width of the footing shall be the width of the bale it supports, except that the bales may overhang the exterior edge of the foundation by not more than 3 inches to accommodate rigid perimeter insulation. Footings shall extend a minimum of 12 inches below natural, undisturbed soil, or to the frost line, whichever is lower.

(g) (1) Vertical reinforcing bars with a minimum diameter of $^1/_2$ inch shall be embedded in the foundation to a minimum depth of 7 inches, and shall extend above the foundation by a minimum of 12 inches. These vertical bars shall be located along the center line of the bale wall, spaced not more than 2 feet apart. A vertical bar shall also be located within 1 foot of any opening or corner, except at locations occupied by anchor bolts.

(2) Nonbale walls abutting bale walls shall be attached by means of one or more of the following methods or by means of an acceptable equivalent:

(A) Wooden dowels of $^5/_8$ inch minimum diameter and of sufficient length to provide 12 inches of penetration into the bale, driven through holes bored in the abutting wall stud, and spaced to provide one dowel connection per bale.

(B) Pointed wooden stakes, a minimum of 12 inches in length and $1^1/_2$ inches by $3^1/_2$ inches at the exposed end, fully driven into each course of bales, as anchorage points.

(C) Bolted or threaded rod connection of the abutting wall, through the bale wall, to a steel nut and steel or plywood plate washer, a minimum of 6 inches square and a minimum thickness of $^3/_{16}$ of an inch for steel and $^1/_2$ inch for plywood, in a minimum of three locations.

(3) (A) Loadbearing bale walls shall be anchored to the foundation at intervals of 6 feet or less. There shall be embedded in the foundation a minimum of $2^1/_2$ inch diameter steel anchor bolts per wall, with one bolt located within 36 inches of each end of each wall. Sections of $^1/_2$ inch diameter threaded rod shall be connected to the anchor bolts, and to each other, by means of threaded coupling nuts, and shall extend through the roof bearing assembly and be fastened with a steel washer and nut.

(B) Bale walls and roof bearing assemblies may be anchored to the foundation by means of other methods which are adequate to resist uplift forces resulting from the design wind load. There shall be a minimum of two points of anchorage per wall, spaced not more than 6 feet apart, with one located within 36 inches of each end of each wall.

(C) With loadbearing bale walls, the dead load of the roof and ceiling systems will produce vertical compression of the walls. Regardless of the anchoring system used to attach the roof bearing assembly to the foundation, prior to installation of wall finish materials, the nuts, straps, or cables shall be retightened to compensate for this compression.

(h) (1) A moisture barrier shall be used between the top of the foundation and the bottom of the bale wall to prevent moisture from migrating through the foundation so as to come into contact with the bottom course of bales. This barrier shall consist of one of the following:

(A) Cementitious waterproof coating.

(B) Type 30 asphalt felt over an asphalt emulsion.

(C) Sheet metal flashing, sealed at joints.

(D) Another building moisture barrier, as approved by the building official.

(2) All penetrations through the moisture barrier, as well as all joints in the barrier, shall be sealed with asphalt, caulking, or an approved sealant.

(i) (1) For nonloadbearing walls, bales may be laid either flat or on-edge. Bales in loadbearing bale walls shall be laid flat and be stacked in a running bond, where possible, with each bale overlapping the two bales beneath it. Overlaps shall be a minimum of 12 inches. Gaps between the ends of bales which are less than 6 inches in width may be filled by an untied flake inserted snugly into the gap.

(2) The first course of bales shall be laid by impaling the bales on the rebar verticals and threaded rods, if any, extending from the foundation. When the fourth course has been laid, vertical #4 rebar pins, or an acceptable equivalent, long enough to extend through all four courses, shall be driven down through the bales, two in each bale, located so that they do not pass through the space between the ends of any two bales. The layout of these rebar pins shall approximate the layout of the rebar pins extending from the foundation. As each subsequent course is laid, two pins, long enough to extend through that course and the three courses immediately below it, shall be driven down through each bale. This pinning method shall be continued to the top of the wall. In walls seven or eight courses high, pinning at the fifth course may be eliminated.

(3) Alternative pinning method: when the third course has been laid, vertical #4 rebar pins, or an acceptable equivalent, long enough to extend through all three courses, shall be driven down through the bales, two in each bale, located so that they do not pass through the space between the ends of any two bales. The layout of these rebar pins shall approximate the layout of the rebar pins extending from the foundation. As each subsequent course is laid, two pins, long enough to extend through that course and the two courses

immediately below it, shall be driven down through each bale. This pinning method shall be continued to the top of the wall.

(4) Only full-length bales shall be used at corners of loadbearing bale-walls.

(5) Vertical #4 rebar pins, or an acceptable alternative, shall be located within one foot of all corners or door openings.

(6) Staples, made of #3 or larger rebar formed into a "U" shape, a minimum of 18 inches long with two 6-inch legs, shall be used at all corners of every course, driven with one leg into the top of each abutting corner bale.

(j) (1) All loadbearing bale walls shall have a roof bearing assembly at the top of the walls to bear the roof load and to provide the means of connecting the roof structure to the foundation. The roof bearing assembly shall be continuous along the tops of loadbearing bale walls.

(2) An acceptable roof bearing assembly option consists of two double 2-inch by 6-inch, or larger, horizontal top plates, one located at the inner edge of the wall and the other at the outer edge. Connecting the two doubled top plates, and located horizontally and perpendicular to the length of the wall, shall be 2-inch by 6-inch cross members, spaced no more than 72 inches center to center, and as required to align with the threaded rods extending from the anchor bolts in the foundation. The double 2-inch by 6-inch top plates shall be face-nailed with 16d nails staggered at 16-inch o.c., with laps and intersections face-nailed with four 16d nails. The cross members shall be face-nailed to the top plates with four 16d nails at each end. Corner connections shall include overlaps nailed as above or an acceptable equivalent, such as plywood gussets or metal plates. Alternatives to this roof bearing assembly option shall provide equal or greater vertical rigidity and provide horizontal rigidity equivalent to a continuous double 2 by 4 top plate.

(3) The connection of roof framing members to the roof plate shall comply with the appropriate sections of the California Building Code.

(k) All openings in loadbearing bale walls shall be a minimum of one full bale length from any outside corner, unless exceptions are approved by an engineer or architect licensed by the state to practice. Wall or roof load present above any opening shall be carried, or transferred, to the bales below by one of the following:

(1) A frame, such as a structural window or door frame.

(2) A lintel, such as an angle-iron cradle, wooden beam, or wooden box beam. Lintels shall be at least twice as long as the opening is wide and extend a minimum of 24 inches beyond either side of the opening. Lintels shall be centered over openings.

(3) A roof bearing assembly designed to act as a rigid beam over the opening.

(*l*) (1) All weather-exposed bale walls shall be protected from water damage. However, nonbreathing moisture barriers shall not be

used on the upper two-thirds of vertical exterior surfaces of bale walls in order to allow natural transpiration of moisture from the bales.

(2) Bale walls shall have special moisture protection provided at all window sills. Unless protected by a roof, the tops of walls shall also be protected. This moisture protection shall consist of a waterproof membrane, such as asphalt-impregnated felt paper, polyethylene sheeting, or other moisture barrier, as approved by the building official, installed in a manner that will prevent water from entering the wall system at windowsills or at the tops of walls.

(m) (1) Interior and exterior surfaces of bale walls shall be protected from mechanical damage, flame, animals, and prolonged exposure to water. Bale walls adjacent to bath and shower enclosures shall be protected by a moisture barrier.

(2) Cement stucco shall be reinforced with galvanized woven wire stucco netting or an equivalent, as approved by the building official. The reinforcement shall be secured by attachment through the wall at a maximum spacing of 24 inches horizontally and 16 inches vertically.

(3) Where bales abut other materials, the plaster or stucco shall be reinforced with galvanized expanded metal lath, or an acceptable equivalent, extending a minimum of 6 inches onto the bales.

(4) Earthen and lime-based plasters may be applied directly onto bale walls without reinforcement, except where applied over materials other than straw.

(n) (1) All wiring within or on bale walls shall meet all provisions of the California Electrical Code. Type "NM" or "UF" cable may be used, or wiring may be run in metallic or nonmetallic conduit systems.

(2) Electrical boxes shall be securely attached to wooden stakes driven a minimum of 12 inches into the bales, or an acceptable equivalent.

(o) Water or gas pipes within bale walls shall be encased in a continuous pipe sleeve to prevent leakage within the wall. Where pipes are mounted on bale walls, they shall be isolated from the bales by a moisture barrier.

CHAPTER 942

An act to add Section 27388 to the Government Code, relating to recordation fees.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 27388 is added to the Government Code, to read:

27388. (a) In addition to any other recording fees specified in this code, upon the adoption of a resolution by the county board of supervisors, a fee of up to two dollars ($2) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded within that county , except those expressly exempted from payment of recording fees. "Real estate instrument" is defined for the purpose of this section as a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, and a notice of default. "Real estate instrument" does not include any deed, instrument, or writing subject to the imposition of a documentary transfer tax as defined in Section 11911 of the Revenue and Taxation Code, nor any document required to facilitate the transfer subject to the documentary transfer tax. The fees, after deduction of any actual and necessary administrative costs incurred by the county in carrying out this section, shall be paid quarterly to the county auditor or director of finance, to be placed in the Real Estate Fraud Prosecution Trust Fund.

(b) Money placed in the Real Estate Fraud Prosecution Trust Fund shall be expended to fund programs to enhance the capacity of local police and prosecutors to deter, investigate, and prosecute real estate fraud crimes. After deduction of the actual and necessary administrative costs referred to in subdivision (a), 60 percent of the funds shall be distributed to district attorneys subject to review pursuant to subdivision (d), and 40 percent of the funds shall be distributed to local law enforcement agencies within the county in accordance with subdivision (c). In those counties where the investigation of real estate fraud is done exclusively by the district attorney, after deduction of the actual and necessary administrative costs referred to in subdivision (a), 100 percent of the funds shall be distributed to the district attorney, subject to review pursuant to subdivision (d). The funds so distributed shall be expended for the exclusive purpose of deterring, investigating, and prosecuting real estate fraud crimes.

(c) The county auditor or director of finance shall distribute funds in the Real Estate Fraud Prosecution Trust Fund to eligible law enforcement agencies within the county pursuant to subdivision (b), as determined by a Real Estate Fraud Prosecution Trust Fund Committee composed of the district attorney, the county chief administrative officer, and the chief officer responsible for consumer protection within the county, each of whom may appoint representatives of their offices to serve on the committee. If a county lacks a chief officer responsible for consumer protection, the county board of supervisors may appoint an appropriate representative to serve on the committee. The committee shall establish and publish

deadlines and written procedures for local law enforcement agencies within the county to apply for the use of funds and shall review applications and make determinations by majority vote as to the award of funds using the following criteria:

(1) Each law enforcement agency that seeks funds shall submit a written application to the committee setting forth in detail the agency's proposed use of the funds.

(2) In order to qualify for receipt of funds, each law enforcement agency submitting an application shall provide written evidence that the agency either:

(A) Has a unit, division, or section devoted to the investigation or prosecution of real estate fraud, or both, and the unit, division, or section has been in existence for at least one year prior to the application date.

(B) Has on a regular basis, during the three years immediately preceding the application date, accepted for investigation or prosecution, or both, and assigned to specific persons employed by the agency, cases of suspected real estate fraud, and actively investigated and prosecuted those cases.

(3) The committee's determination to award funds to a law enforcement agency shall be based on, but not be limited to, (A) the number of real estate fraud cases filed in the prior year; (B) the number of real estate fraud cases investigated in the prior year; (C) the number of victims involved in the cases filed; and (D) the total aggregated monetary loss suffered by victims, including individuals, associations, institutions, or corporations, as a result of the real estate fraud cases filed, and those under active investigation by that law enforcement agency.

(4) Each law enforcement agency that, pursuant to this section, has been awarded funds in the previous year, upon reapplication for funds to the committee in each successive year, in addition to any information the committee may require in paragraph (3), shall be required to submit a detailed accounting of funds received and expended in the prior year. The accounting shall include (A) the amount of funds received and expended; (B) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (C) the number of filed complaints, investigations, arrests, and convictions that resulted from the expenditure of the funds; and (D) other relevant information the committee may reasonably require.

(d) The county board of supervisors shall annually review the effectiveness of the district attorney in deterring, investigating, and prosecuting real estate fraud crimes based upon information provided by the district attorney in an annual report submitted to the board detailing both:

(1) Facts, based upon, but not limited to, (A) the number of real estate fraud cases filed in the prior year; (B) the number of real estate fraud cases investigated in the prior year; (C) the number of victims

involved in the cases filed; (D) the number of convictions obtained in the prior year; and (E) the total aggregated monetary loss suffered by victims, including individuals, associations, institutions, corporations, and other relevant public entities, according to the number of cases filed, investigations, prosecutions, and convictions obtained.

(2) An accounting of funds received and expended in the prior year, which shall include (A) the amount of funds received and expended; (B) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (C) the number of filed complaints, investigations, prosecutions, and convictions that resulted from the expenditure of funds; and (D) other relevant information provided at the discretion of the district attorney.

(e) The intent of the Legislature in enacting this section is to have an impact on real estate fraud involving the largest number of victims. To the extent possible, an emphasis should be placed on fraud against individuals whose residences are in danger of, or are in, foreclosure as defined under subdivision (b) of Section 1695.1 of the Civil Code. Case filing decisions continue to be in the discretion of the prosecutor.

(f) A district attorney's office or a local enforcement agency that has undertaken investigations and prosecutions that will continue into a subsequent program year may receive nonexpended funds from the previous fiscal year subsequent to the annual submission of information detailing the accounting of funds received and expended in the prior year.

(g) No money collected pursuant to this section shall be expended to offset a reduction in any other source of funds. Funds from the Real Estate Fraud Prosecution Trust Fund shall be used only in connection with criminal investigations or prosecutions involving recorded real estate documents.

CHAPTER 943

An act to add Section 15819.90 to the Government Code, relating to veterans, and making an appropriation therefor.

[Approved by Governor October 15, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 15819.90 is added to the Government Code, to read:

15819.90. (a) It is the intent of the Legislature to authorize the Department of Veterans Affairs to begin preliminary work on two additional Southern California veterans homes.

(b) Notwithstanding any other provision of law, the controller shall make a loan from the General Fund to the Department of Veterans Affairs of up to one million six hundred eighty thousand dollars ($1,680,000), as necessary to complete site studies, suitability reports, environmental studies, master planning, and architectural drawings of the two sites chosen by the Governor's Task Force on a Southern California Veterans' Home in the December 31, 1994 report. The General Fund shall be repaid from any bond funds authorized in subsequent legislation for these projects or from funds committed pursuant to paragraph (e) of this section.

(c) Funds borrowed pursuant to paragraph (b) shall be available, in addition to the federal funds available pursuant to the State Veterans' Home Assistance Improvement Act of 1977 (38 U.S.C.A. Sec. 8131 et seq.), for this purpose.

(d) Funds borrowed pursuant to this section shall not be allocated by the controller until the department provides, in writing, confirmation from the affected local entities, that the land for the proposed sites will be donated to the state.

(e) In the event the bonds for this project are not authorized by the Legislature, or are authorized but not sold, the Department of Veterans Affairs shall commit a sufficient amount of its support appropriation to repay any loans made for the project from the General Fund. It is the intent of the Legislature that this commitment shall be included in future annual budget acts until all outstanding loans from the General Fund are repaid either through the proceeds from the sale of bonds or from an appropriation.

CHAPTER 944

An act to add Chapter 8.6 (commencing with Section 10089.5) to Part 1 of Division 2 of the Insurance Code, relating to earthquake insurance, and making an appropriation therefor.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. (a) Notwithstanding any other provision of law, the California Earthquake Authority shall not become operational and issue any policies of earthquake insurance unless specifically authorized to do so by a statute enacted after the enactment of this act. The Insurance Commissioner is, however, authorized to take all other actions necessary to create the California Earthquake

Authority and secure the participation of all parties necessary for its operation.

(b) The commissioner is specifically authorized to seek commitments for reinsurance and the investment of private capital in the authority to expand the capacity of the authority upon its commencement of operations. By January 30, 1996, the commissioner shall report to the Legislature the projected availability and sums of reinsurance and private capital investments for the authority upon its commencement, the anticipated terms and conditions for the reinsurance and investment of private capital, and the impact of that reinsurance and private capital on the capacity of the authority.

(c) Within 60 days of the effective date of this act or January 30, 1996, whichever is earlier, the commissioner shall provide to the Legislature, and to any member of the Legislature upon that member's request, a report detailing the projected capacity of the authority. The report shall discuss and analyze scenarios based upon participation in the authority by at least 65 percent, 75 percent, and 100 percent, respectively, of the residential property insurance market in this state. The report shall also provide detailed information on the probabilities of occurrences of events that would result in payments from the authority, and provide the supporting data for that information, including any assumptions or modeling programs.

(d) It is the intent of the Legislature that the earthquake policy issued by the authority shall provide coverage for the primary dwelling structure, and limited coverage for contents and additional living expenses in amounts as specified in Section 10089. Within 60 days of the effective date of this act or January 30, 1996, whichever is sooner, the commissioner shall provide to the Legislature detailed information on the cost savings of reducing levels of earthquake insurance coverage predominantly available in January 1994 to lower minimum levels of coverage.

(e) The commissioner shall identify at least two alternatives to the California Earthquake Authority concept that address the problem of earthquake insurance and the unavailability of homeowners' insurance. The commissioner shall establish an earthquake insurance advisory committee with consumer and other representatives to identify and consider alternative solutions.

(f) It is the intent of the Legislature to hold interim hearings on the earthquake insurance problem and on possible alternatives to solve the problem.

SEC. 2. Chapter 8.6 (commencing with Section 10089.5) is added to Part 1 of Division 2 of the Insurance Code, to read:

CHAPTER 8.6. CALIFORNIA EARTHQUAKE AUTHORITY

10089.5. As used in this chapter:

(a) "Authority" means the California Earthquake Authority.

(b) "Available capital" means the sum of all moneys and invested assets, in excess of two hundred million dollars ($200,000,000) actually held in the California Earthquake Authority Fund, except as otherwise appropriated to pay specific losses and loss adjustment expenses under policies of basic residential earthquake insurance. "Available capital" does not include the proceeds of contracts of reinsurance procured by or in the name of the authority pursuant to subdivision (a) of Section 10089.10, or any funds realized on account of any transaction pursuant to capital market contracts authorized by subdivision (b) of Section 10089.10.

(c) "Basic residential earthquake insurance" means that policy of residential earthquake insurance described in Section 10089.

(d) "Board" means the governing board of the authority.

(e) "Bonds" means bonds, notes, commercial paper, variable rate and variable maturity securities, and any other evidence of indebtedness.

(f) "Capital market contract" means an agreement between the authority and a purchaser pursuant to which the purchaser agrees to purchase bonds of the authority.

(g) "Panel" means the advisory panel of the authority.

(h) "Policy of residential property insurance" means those policies described in Section 10087.

(i) "Private capital market" means one or more purchasers of bonds of the authority pursuant to a capital market contract.

(j) "Qualifying residential property" includes all those residential dwellings set forth in Section 10087.

(k) "Residential earthquake insurance market share" means an individual insurer's total direct premium received for (1) residential earthquake policies and endorsements written or renewed by the insurer in California and (2) residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(*l*) "Residential property insurance market share" means an individual insurer's total gross premiums received for residential property insurance policies written or renewed by the insurer, divided by the total gross premiums received by all admitted insurers for residential property insurance in California.

(m) "Revenue" means all income and receipts of the authority, including, but not limited to, income and receipts derived from bond purchase agreements, capital contributions by insurers, assessments levied on insurers, surcharges applied to authority earthquake policyholders, and all interest or other income from investment of money in any fund or account of the authority established for the payment of principal or interest, or premiums on bonds, including reserve funds.

10089.6. (a) There is hereby created the California Earthquake Authority, which shall be administered under the authority of the commissioner and have the powers conferred by this chapter. The authority shall be authorized to transact insurance in this state as necessary to sell policies of basic residential earthquake insurance in the manner set forth in Sections 10089.26, 10089.27, and 10089.28. The authority shall have no authority to transact any other type of insurance business. No policies shall be issued by the authority until enactment of the legislation specified in Section 1 of the act enacting this section.

(b) The authority shall be deemed to be an insurer for purposes of the Insurance Code and the duties owed an insured under common law and statutes.

10089.7. (a) The authority shall be governed by a three-member governing board consisting of the Governor, the Treasurer, and the Insurance Commissioner, each of whom may name designees to serve as board members in their place. The Speaker of the Assembly and the Chairperson of the Senate Rules Committee shall serve as nonvoting, ex officio members of the board, and may name designees to serve in their place.

(b) The board shall be advised by an advisory panel whose members shall be appointed by the commissioner, except as provided in this subdivision. The advisory panel shall consist of four members who represent insurance companies that are licensed to transact fire insurance in the state, two licensed insurance agents, one seismologist, one person expert in construction requirements and building codes, and two members of the public not connected with the insurance industry. In addition, the Governor, the Speaker of the Assembly, and the Chairperson of the Senate Rules Committee may each appoint one member of the public not connected with the insurance industry. Panel members shall serve for two-year terms, which may be staggered for administrative convenience, and panel members may be reappointed. The commissioner shall be a nonvoting, ex officio member of the panel and shall be entitled to attend all panel meetings, either in person or by representative.

(c) The board shall have the power to conduct the affairs of the authority and may perform all acts necessary or convenient in the exercise of that power. Without limitation, the board may: (1) employ or contract with officers and employees to administer the authority; (2) retain outside actuarial, geological, and other professionals; (3) enter into other obligations relating to the operation of the authority; (4) invest the moneys in the California Earthquake Authority Fund; (5) obtain reinsurance and financing for the authority as authorized by this chapter; (6) contract with participating insurers to service the policies of basic residential earthquake insurance issued by the authority; (7) issue bonds payable from and secured by a pledge of the authority of all or any part of the revenues of the authority to finance the activities

authorized by this chapter and sell those bonds at public or private sale in the form and on those terms and conditions as the Treasurer shall approve; (8) pledge all or any part of the revenues of the authority to secure bonds and any repayment or reimbursement obligations of the authority to any provider of insurance or a guarantee of liquidity or credit facility entered into to provide for the payment of debt service on any bond of the authority; (9) employ and compensate bond counsel, financial consultants, and other advisers determined necessary by the Treasurer in connection with the issuance and sale of any bonds; (10) issue or obtain from any department or agency of the United States or of this state, or any private company, any insurance or guarantee of liquidity or credit facility determined to be appropriate by the Treasurer to provide for the payment of debt service on any bond of the authority; (11) engage the commissioner to collect revenues of the authority; (12) issue bonds to refund or purchase or otherwise acquire bonds on terms and conditions as the Treasurer shall approve; and (13) perform all acts that relate to the function and purpose of the authority, whether or not specifically designated in this chapter.

(d) The authority shall reimburse board and panel members for their reasonable expenses incurred in attending meetings and conducting the business of the authority.

(e) (1) There shall be no civil or criminal liability in a private capacity, on account of any act performed or omitted or obligation entered into an official capacity, when done or omitted in good faith and without intent to defraud, on the part of the board, the panel, or any member of either, or on the part of any officer, employee, or agent of the authority.

(2) No licensed insurer shall have any antitrust civil or criminal liability under the Cartwright Act (Part 2 (commencing with Section 16600) of Division 7 of the Business and Professions Code) by reason of its activities conducted in compliance with this chapter. Further, the California Earthquake Authority shall be deemed a joint arrangement established by statute to ensure the availability of insurance pursuant to subdivision (b) of Section 1861.03.

(f) The Attorney General, in his or her discretion, shall provide a representative of his or her office to attend and act as antitrust counsel at all meetings of the panel. The Attorney General shall be compensated for legal service rendered in the manner specified in Section 11044 of the Government Code.

(g) The authority may sue or be sued and may employ or contract with that staff and those professionals the board deems necessary for its efficient administration.

(h) The authority may contract for the services of a chief executive officer, a chief financial officer, and an operations manager, and may contract for the services of reinsurance intermediaries, financial market underwriters, modeling firms, a computer firm, an actuary, an insurance claims consultant, counsel,

and private money managers. These contracts shall not be subject to otherwise applicable provisions of the Government Code and the Public Contract Code, and for those purposes, the authority shall not be considered a state agency or other public entity. Other employees of the authority shall be subject to civil service provisions.

(i) Members of the board and panel, and their designees, and the chief executive officer, the chief financial officer, and the operations manager of the authority shall be required to file financial disclosure statements with the Fair Political Practices Commission. The appointing authorities for members and designees of the board and panel shall, when making appointments, avoid appointing persons with conflicts of interest. Section 87406 of the Government Code, the Milton Marks Postgovernment Employment Restrictions Act of 1990, shall apply to the authority. Members of the panel shall be deemed to be designated employees for the purpose of that act. In addition, no person who is employed as a regular or contract employee of the authority shall, upon leaving the employment of the authority, seek, accept, or enter into employment or a consulting or other contractual arrangement for the period of one year with any employer or entity that entered into an agreement with the authority during the time the employee was employed by the authority.

(j) 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) applies to meetings of the board and the panel.

10089.8. (a) The authority shall operate pursuant to a written plan of operations. The panel shall submit a plan to the board for approval. If it approves the plan, the board shall submit the plan to the commissioner for his or her approval. On receiving the commissioner's approval, the board shall formally adopt the plan and submit the plan to the Legislature. Upon commencement of the issuance of insurance policies by the authority, any subsequent amendments to the plan of operation shall be approved by the board and the commissioner.

(b) If at any time the commissioner disapproves the submitted plan or any plan amendments adopted by the board, the board may within 15 days submit changes in the plan to the commissioner. If the commissioner disapproves the plan or the changes in the plan, or if the board fails to submit a plan or to make and submit the requested changes, the commissioner may require the board to adopt that plan or those changes directed by the commissioner.

(c) The plan of operations shall establish in detail the policies and procedures of the authority, including, but not limited to, financial operations of the authority, claims procedures, methods of premium collection, procedures consistent with constitutional, statutory, and common law requirements for resolving grievances of applicants or policyholders who are dissatisfied with application handling or adverse claims decisions, whether by the authority or by a servicing

insurer, assessment procedures, a plan for resolution of assessment disputes between the authority and insureds, servicing carrier fees and expenses, reasonable underwriting standards, and producer compensation.

10089.9. Upon commencement of participation in the authority, each participating insurer shall be required to execute a contract with the commissioner that sets forth its rights and responsibilities as an authority participant. The form of contract shall be part of the authority's plan of operations and shall be uniform for every participating insurer.

10089.10. To expand the capacity of the authority and achieve maximum capacity for writing earthquake coverage, the authority shall do both of the following acts, on prior approval of the commissioner:

(a) The authority shall purchase contracts of reinsurance at rates and on terms the board considers reasonable and appropriate.

(b) Under the commissioner's continued, active supervision, the authority, through the Treasurer, shall enter capital market contracts on terms as the board and Treasurer may consider reasonable and appropriate.

(c) The total annual expenditure for reinsurance contracts and capital market contracts pursuant to this section shall not exceed a reasonable and appropriate percentage of the annual earthquake insurance premiums collected by the authority.

10089.11. (a) The commissioner shall adopt regulations to implement the provisions of this chapter within 60 days of its effective date. The regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(b) Regulations shall specify procedures for ratemaking and forms approval, define the type and quality of investments the authority is authorized to make, define coverage types and limits, set forth producer compensation rates, and specify the procedures to be followed by the authority following any earthquake event where the magnitude of earthquake losses make it likely that prorated benefits may be paid. The regulations shall be consistent with the requirements of Proposition 103.

(c) Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, may challenge any action of the commissioner under this chapter, and may enforce any provision of this chapter.

(d) All materials and documents prepared or used by the authority to determine its rates other than proprietary materials and documents owned or licensed by third parties shall be considered

public documents, and copies of the public documents shall be made available to the public for inspection at no charge. Members of the public may purchase public ratemaking related documents from the authority at actual cost.

10089.12. The commissioner shall have full power and authority to examine the books and records of the authority at any time, and in connection with the operations and function of the authority, the commissioner shall have the duties and powers set forth in Article 14.5 (commencing with Section 1065.1) of Chapter 1 of Part 2 of Division 1 and in Division 3 (commencing with Section 12900).

10089.13. (a) One year following its commencement of operations, and annually thereafter by each January 1, the authority shall report to the Legislature and the commissioner on program operations. The report shall include, but shall not be limited to, the financial condition of the authority, an evaluation of the functioning of the authority in light of its stated purposes, and an analysis of any recommended program changes to permit the authority to better fulfill its stated purposes.

(b) In verification of the matters set forth in the annual report provided for in subdivision (a), the Department of Finance shall approve qualified auditors selected by the commissioner to examine the books and accounts relating to all matters concerning the financial and program operations of the authority. The commissioner shall file a certified report of the examination with the Legislature within 10 days of its receipt. The expense of examining the books and accounts of the authority shall be paid out of the operating funds of the authority.

(c) The authority shall, within 120 days following a seismic event that results in the payment of claims by the authority, and within one year of a major seismic event that results in the payment of claims by the authority, submit to the Legislature and the commissioner a concise written report of program operations related to that seismic event. The reports shall include, but not be limited to, progress on payment of claims, claims payments made and anticipated, and the functioning of the authority in response to the seismic event.

(d) This section shall become operative upon enactment of the legislation specified in Section 1 of the act enacting this section.

10089.14. (a) Subject to the additional conditions of subdivision (b), the authority shall not issue any earthquake policy and no insurer shall transfer any earthquake risk to the authority until all of the following conditions have been met:

(1) The Internal Revenue Service has determined that the authority will be or is exempt from federal income tax.

(2) Insurers whose cumulative residential property insurance market share is more than 75 percent of the total residential property insurance market in California, measured as of January 1, 1995, have filed letters of intent, with no binding contractual obligation, to participate in the authority.

(3) The authority has obtained letters of intent, with no binding contractual obligation, for capital contributions in the amounts and by the dates set forth in Section 10089.15.

(4) The authority has obtained appropriate risk transfer ability in the form of firm reinsurance commitments in an aggregate amount of not less than 200 percent of the total capital contributions committed by all participating insurers.

(b) Upon certification by the commissioner to the Legislature that the conditions in paragraphs (1) and (4) of subdivision (a) have been met, that letters of intent, with no binding contractual obligation, have been obtained to fulfill the conditions of paragraphs (2) and (3) of subdivision (a), and upon subsequent enactment of the legislation specified in Section 1 of the act enacting this section, the authority shall be operational.

(c) Insurers shall not be entitled to transfer any earthquake risk to the authority until they have met the capital contribution requirements set forth in Section 10089.15 and any related requirements set by the board.

10089.15. (a) Initial operating capital shall be contributed by insurance companies admitted to write residential property insurance in the state. Each insurer that elects to participate in the authority shall contribute as its share of operating capital an amount equal to one billion dollars ($1,000,000,000) multiplied by the percentage representing that insurer's residential earthquake insurance market share as of January 1, 1994, as determined by the board. A minimum of seven hundred fifty million dollars ($750,000,000) in commitments shall be required before the authority may become operational.

(b) Until the authority becomes operational, contributions of initial operating capital shall be held by the Treasurer in trust for the contributing insurers in the California Earthquake Authority Fund, which is hereby created in the State Treasury, subject to reimbursement if the authority does not become operational by March 31, 1996.

(c) Because insurers will retain the risk of earthquake losses on individual earthquake policies until they are renewed into the authority, participating insurers may elect to contribute operating capital in 12 installments payable on the first day of each successive calender month after the insurer elects to participate. Each insurer shall compute its monthly installment based on the portion of the insurer's earthquake coverage that will be renewed into the authority during the next month. The final installment shall be equal to the excess of the participating insurer's required contribution over the sum of the previous 11 installments. Those insurers that elect after March 31, 1996, to participate in the authority shall make initial capital contributions calculated using their residential earthquake insurance market share as of January 1, 1994, or the date of their

election to participate in the authority, whichever contribution amount is greater.

10089.16. On application to the board, payment of any assessments and fees calculated by the board, and fulfillment of any additional requirements imposed by the board, nonparticipating insurers may become participants in the authority with all rights and privileges attendant to that participation.

10089.18. The board shall encourage insurers that sell homeowners' insurance in the state to become participants in the authority.

10089.19. (a) Participating insurers that want to withdraw from the authority may do so on 12 months' written notice to the authority. Insurers that withdraw shall not be entitled to any refund, reimbursement, or reduction of any initial capital contribution obligation or earthquake loss assessments previously paid or accrued with respect to losses incurred prior to the withdrawal. Insurers that withdraw shall offer residential earthquake insurance coverage pursuant to Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2 to those policyholders for whom they write the underlying residential property insurance upon the first renewal following the insurer's notice to the authority. The authority shall nonrenew all policies of basic residential earthquake insurance issued to policyholders whose provider of residential earthquake insurance has withdrawn from the authority. No participating insurer may withdraw unless every insurer affiliated with that insurer (as defined in subdivision (a) of Section 1215), or under common control with that insurer (as defined in subdivision (b) of Section 1215), simultaneously withdraws from the authority.

(b) If a noticed withdrawal would result in participation by insurers whose cumulative residential property insurance market share is less than 65 percent of the total residential property insurance market in California, the commissioner shall make recommendations to the Legislature for the continuation or termination of the authority.

10089.20. The authority shall renew any policy of basic residential earthquake insurance, provided the authority receives payment of the applicable renewal premium on or before the expiration date stated in the policy. The authority may nonrenew a policy on the grounds the property is no longer covered by an underlying policy of residential property insurance. The policy issued by the authority shall not provide coverage in the event that there is no underlying policy of property insurance at the time of loss. In that case, any unearned premiums shall be returned to the policyholder on a pro rata basis.

10089.23. (a) (1) If at any time following the payment of earthquake losses the authority's available capital is reduced to less than two hundred million dollars ($200,000,000), or if at any time the authority's available capital is insufficient to pay benefits and

continue operations, the authority shall have the power to assess participating insurance companies subject to the maximum limits as set forth in this section and Section 10089.30. The assessment shall be limited to the amount necessary to pay the outstanding or expected claims of the authority and to return the authority's available capital to two hundred million dollars ($200,000,000), as determined by the board, subject to approval by the commissioner.

(2) Each participating insurer's assessment shall be determined by multiplying its residential earthquake insurance market share, as of December 31 of the immediately preceding year or the most recent year for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority.

(3) Maximum permissible insurer assessments pursuant to this section and Section 10089.30, maximum permissible earthquake policyholder assessments pursuant to Section 10089.29, and maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 shall be reduced uniformly by multiplication of the maximum assessments and other amounts provided in those sections by the percentage of the total residential property insurance market share participation attained by the authority upon its commencement, as described in Section 10089.14. The total amount of all assessments levied on participating insurance companies by the authority pursuant to this section shall not exceed three billion dollars ($3,000,000,000), less any assessment reduction specified in subdivision (c), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once the authority has levied an assessment or assessments equaling three billion dollars ($3,000,000,000) in the aggregate on participating insurers pursuant to this section, less any assessment reduction specified in subdivision (c), the authority's power to assess participating insurers under this section shall cease and the authority shall be prohibited from levying additional assessments pursuant to this section.

(4) Beginning December 31 of the first year following commencement of operations, the board shall adjust the maximum permissible insurer assessments pursuant to this section and Section 10089.30, the maximum permissible authority policyholder assessment pursuant to Section 10089.29, and the maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 to reflect the market share of new insurers entering into the authority as authorized by Section 10089.16 and participating insurers withdrawing from the authority as authorized by Section 10089.19. The adjustments shall be made in the same manner as authorized by paragraph (3).

(b) In the case of any insurer assessment, the authority shall cause to be sent to each participating company a notice of that company's assessment, and full payment shall be due within 30 days and shall be

overdue after 30 days. Penalties and interest shall be assessed for late payments in the same manner as provided for late payments of the insurer gross premium tax pursuant to Section 12258 of the Revenue and Taxation Code. The board may waive the penalties and interest for good cause shown. The board shall make every effort to assess insurers only for funds reasonably anticipated to be necessary for claims payments and to return the authority's available capital to two hundred million dollars ($200,000,000).

(c) On the first December 31 after two years following the date of commencement of authority operations, the aggregate assessment authorized under this section shall be reduced by an amount equal to the amount of available capital in excess of one billion dollars ($1,000,000,000). Each December 31 thereafter, the board shall further reduce the aggregate assessment authorized under this section by the net increase in available capital in excess of the previous level of available capital at which a reduction in the aggregate assessment was made. No reduction pursuant to this subdivision shall exceed 15 percent of the original aggregate assessment in any year of the first seven years of operation of the authority. In no event shall any reduction previously authorized by the board be reinstated. Notwithstanding the other provisions of this section, the aggregate assessment authorized by this section shall be reduced to zero no later than 10 years following the commencement of authority operations.

10089.25. Beginning December 31, 1996, and annually thereafter on the 31st of December, the board shall notify each participating insurer of the maximum earthquake loss funding assessment level that it may be required to meet.

10089.26. The authority shall be authorized to issue policies of basic residential earthquake insurance to any owner of a qualifying residential property, as long as the owner has secured a policy of residential property insurance from a participating insurer.

10089.27. (a) Every participating insurer that has in-force residential earthquake insurance policies in the state as of the date of commencement of authority operations shall renew each in-force residential earthquake insurance policy or earthquake coverage provided by endorsement into the authority at the time the policy or endorsement comes up for renewal. The effective date of each policy renewal into the authority shall be the renewal date of the policy as recorded in the records of the insurer and disclosed to the policyholder. The risk of loss under the insurance policy does not transfer to the authority until 12:01 a.m. of the policy renewal date.

(b) (1) All policies of residential earthquake insurance written by any participating insurer shall have been renewed into the authority within one year of the commencement of operations of the authority or the date an insurer elects to participate in the authority, whichever is later, and after that date, no participating insurer shall be permitted to write a policy of insurance that provides coverage

within the terms and limits of a policy of basic residential earthquake insurance for any qualifying residential property in the state. Participating insurers may sell residential earthquake insurance products that supplement or augment the basic residential earthquake insurance provided by the authority.

(2) Upon application to the authority demonstrating good cause and approval of the commissioner, a participating insurer may take up to 60 days beyond that one-year period to complete its renewal of earthquake policies into the authority. No extension of time to complete earthquake policy renewals into the authority shall serve to extend the due date by which an insurer is to make its initial capital contribution, as set forth in Section 10089.15. The commissioner shall not approve any extension if the effect of the extension would allow an insurer to selectively transfer earthquake policies with high risks to the authority while retaining policies with lower risks during that interim period.

(3) After policies of residential earthquake insurance are renewed in the authority, insurers shall have no responsibilities or liabilities regarding those policies for losses incurred after the date of renewal of those policies, except for duties and responsibilities to the authority and policyholders under the terms of this chapter.

(4) No insurer may participate in the authority unless every insurer affiliated with that insurer (as defined in subdivision (a) of Section 1215) or under common control with that insurer (as defined in subdivision (b) of Section 1215) also participates in the authority.

10089.28. (a) All policies of residential earthquake insurance provided by the authority shall be written by the authority. Authority policies shall be marketed and policyholders serviced by the participating insurer that writes the underlying policy of residential property insurance, and participating insurers shall be reasonably compensated for the claims and policyholder services they provide on behalf of the authority.

(b) Upon commencement of operation of the authority, the participating insurer shall notify each insured that the authority is the provider of earthquake coverage under the policy. The form and method of notice shall meet standards established by the commissioner by regulation. The authority shall provide to participating insurers appropriate applications and forms and shall maintain records of all policies written, moneys received, and claims paid.

10089.29. (a) If benefits paid by the authority following an earthquake event exhaust the total of (1) the authority's available capital, (2) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15 and 10089.23, (3) all reinsurance actually available and under contract to the authority, and (4) all capital committed and actually available by contract to the authority from private capital markets, the Treasurer shall issue revenue bonds or shall issue or secure other debt financing of the

State of California in an amount up to one billion dollars ($1,000,000,000), in an amount determined by the board pursuant to Section 10089.32. The Treasurer shall make available the net proceeds of those bonds as funding for the authority. These funds shall not be used to replenish the fund.

(b) In the event of a bond issuance or debt financing arrangement pursuant to this section, the authority shall have the authority annually to surcharge all authority policyholders to secure funds solely to repay the bonded indebtedness or other debt. The net surcharge collected shall not exceed one billion dollars ($1,000,000,000), plus interest payable, and in no event shall the surcharge on any individual authority policyholder exceed 20 percent of his or her annual basic residential earthquake insurance premium in any one year.

(c) Consistent with the provisions of Section 676, the authority shall cancel the policy of basic residential earthquake insurance if the policyholder fails to pay the earthquake policy surcharge authorized by the authority, and the insurer shall cancel the policy of residential property insurance if the policyholder fails to pay the policy surcharge authorized by the authority.

10089.30. If benefits paid by the authority due to earthquake events exhaust the total of (a) the authority's available capital, (b) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15 and 10089.23, (c) all reinsurance actually available and under contract to the authority, (d) the maximum amount of all authority policyholder assessments pursuant to Section 10089.29, and (e) all capital committed and actually available from the private capital markets, the board, subject to the approval of the commissioner, shall have the power to assess participating insurance companies subject to the maximum limits in this section. The total amount of all assessments levied against participating insurance companies by the authority pursuant to this section shall not exceed two billion dollars ($2,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once the authority has levied an assessment or assessments equaling two billion dollars ($2,000,000,000) in the aggregate on participating insurers pursuant to this section, the authority's power to assess participating insurers under this section shall cease and the authority shall be prohibited from levying additional assessments pursuant to this section. The board shall make assessments pursuant to this section by the same method set forth in paragraph (2) of subdivision (a) of Section 10089.23, in proportion to each participating insurer's residential earthquake insurance market share. The assessment shall be limited to the amount necessary to pay the expected claims of the authority and return the authority's available capital to two hundred million dollars ($200,000,000), as determined by the board, subject to approval by the commissioner.

10089.32. The authority shall endeavor at all times to make specific authority earthquake policyholder assessments, and the Treasurer shall endeavor at all times to secure debt financing, only for the actual funds reasonably estimated to be required for immediate authority operations.

10089.33. If the average daily balance of the authority's available capital exceeds six billion dollars ($6,000,000,000) for the last 180 days of any calendar year, the board shall relieve all participating insurers of their obligation to pay additional earthquake loss assessments under this chapter, by an amount equal to the amount of available capital in excess of six billion dollars ($6,000,000,000), as provided in this subdivision. Each December 31 thereafter, the board shall further reduce the aggregate assessment authorized under this section by the net increase in available capital in excess of the previous levels of available capital at which a reduction in the aggregate assessment was made. No reduction pursuant to this subdivision shall exceed 15 percent of the original aggregate assessment in any year of operation of the authority. In no event shall any reduction previously authorized by the board be reinstated.

10089.34. (a) (1) The policies issued by the authority shall not be subject to assessment for, nor shall any authority policyholder be eligible for benefits from, the California Insurance Guaranty Association.

(2) Policies of residential earthquake insurance written by participating insurers that supplement, augment, or are in excess of the authority's policy of basic earthquake insurance may be subject to assessment by the California Insurance Guaranty Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(b) (1) Policies of basic residential earthquake insurance written by nonparticipating insurers may be subject to assessment by the California Insurance Guaranty Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(2) Participating insurers of the authority shall have no obligation to pay assessments to the California Insurance Guaranty Association for those policies of basic residential earthquake insurance written by nonparticipating insurers.

10089.35. (a) If at any time all the authority's available capital has been exhausted and no source of additional funds such as assessments, reinsurance, or private capitol market moneys is available to the authority, the board shall draw up and present to the commissioner a plan to pay claims on a pro rata basis or in installment payments. The board shall maintain sufficient capital to ensure the continued operation of the authority for the purpose of paying claims and other related obligations. At this point, an insurer shall no longer be able to meet its statutory obligation to offer earthquake insurance coverage by placement in the authority.

(b) The State of California shall have no liability for payment of claims in excess of funds available pursuant to this chapter. The State of California, and any of the funds of the State of California, shall have no obligations whatsoever for payment of claims or costs arising from this act, except as specifically provided in this act.

10089.36. In the event a natural disaster program is enacted by Congress, the panel shall convene and prepare a plan to conform this act with the federal program. Following its deliberations, the panel shall recommend a plan of action to the board and the Legislature.

10089.37. The board shall set aside in each calendar year an amount equal to 5 percent of investment income accruing on the authority's invested funds, or five million dollars ($5,000,000), whichever is less, if deemed actuarially sound by a consulting actuary employed or hired by the authority, to be maintained as a subaccount in the California Earthquake Authority Fund. The authority shall use those funds to fund the establishment and operation of an Earthquake Loss Mitigation Fund. In the event a set-aside of mitigation-related funds may impair the actuarial soundness of the authority, the board may delay the implementation of this section. Any delay shall be reported to the Legislature and the commissioner and reported publicly.

10089.38. Upon the development and implementation of an economical system satisfactory to the board and the commissioner to prevent misapplication of mitigation funds, the Earthquake Loss Mitigation Fund may be applied to supply grants and loans or loan guarantees to dwelling owners who wish to retrofit their homes to protect against earthquake damage.

10089.39. The operational rules of the Earthquake Loss Mitigation Fund shall be part of the authority's plan of operations.

10089.40. (a) Rates established by the authority shall be actuarially sound and shall not be excessive, inadequate, or unfairly discriminatory. Rates shall be established based on the best available scientific information for assessing the risk of earthquake loss. Factors the board shall consider in adopting rates include, but are not limited to, the following:

(1) Location of the insured property and its proximity to earthquake faults and to other geological factors that affect the risk of earthquake or damage from earthquake.

(2) The soil type on which the insured dwelling is built.

(3) Construction type and features of the insured dwelling.

(4) Age of the insured dwelling.

(5) The presence of earthquake hazard reduction factors, including those set forth in subdivision (a) of Section 10089.2.

(b) The classification system established by the board shall not be adjusted or tempered in any way to provide rates lower than are justified for classifications that present a high risk of loss or higher than are justified for classifications that present a low risk of loss.

(c) Policyholders who have retrofitted their homes to withstand earthquake shake damage according to standards and to the extent set by the board shall enjoy a premium discount or credit of not less than 5 percent on he authority-issued policy of residential earthquake coverage, as long as the discount or credit is determined actuarially sound by the authority.

(d) All rates shall be approved by the commissioner prior to their use.

10089.41. (a) The offer of an authority policy by a participating insurer shall constitute a mode of insurer compliance with Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2, and as set forth in Section 10084.

(b) If the authority ceases operation for any reason, including, but not limited to, repeal of this chapter or insolvency of the authority, participating carriers shall no longer be able to satisfy the requirement to offer residential earthquake insurance coverage by placement within the authority, and shall offer coverage by another mode authorized pursuant to Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2 to those policyholders for whom they write the underlying residential property insurance.

10089.43. Upon termination of the authority by the Legislature, its remaining funds shall be transferred to the General Fund unless otherwise directed by the Legislature.

10089.44. Notwithstanding any other provision of law, premiums collected by the authority shall be exempt from collection of the state's insurance premium tax, and the amount of tax foregone by the state shall be considered for all purposes a contribution by the state and its citizens to the capital and operating revenues of the authority.

No funds contributed to, or collected or held by, the authority shall be available to meet the general obligations of the state unless the authority has been terminated and wound up, and all funds due or owing to any person pursuant to this act have been paid, held in reserve, or returned.

10089.46. Bonds issued under this chapter shall not be a debt or liability of the state or of any political subdivision of the state, or a pledge of the full faith and credit of the state or of any political subdivision, but shall be payable solely from the funds provided in this chapter.

10089.47. Bonds issued by the authority are legal investments for all trust funds, the funds of all insurance companies, banks, trust companies, executors, administrators, trustees, and other fiduciaries. The bonds are securities that may legally be deposited with, and received by, any state or municipal officer or agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now, or may hereafter be, authorized by law, including deposits to secure public funds.

10089.48. Interest earned on any bonds issued by the authority shall at all times be free from state personal income tax and corporate income tax.

10089.49. The state hereby pledges to and agrees with the holders of bonds that the state will not limit, alter, or restrict the rights hereby vested in the authority to fulfill each pledge of revenues and any other terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights or remedies of the holders of bonds.

10089.50. The authority may from time to time enter into one or more credit facilities permitting the authority to draw an amount up to one billion dollars ($1,000,000,000) with payment, interest rate, indemnity, compensation, security, default, remedy, and other terms and conditions as determined by the authority. All drawings under these credit facilities shall be available as funding for the authority as provided in Section 10089.29.

10089.51. The authority shall have the power to pledge to the providers of credit facilities and to the owners of bonds the surcharges imposed or to be imposed pursuant to subdivision (b) of Section 10089.29 to secure payment of all obligations of the authority under those credit facilities and bonds, respectively. A pledge of those surcharges shall constitute a lien and security interest that shall immediately attach to the surcharges whether or not imposed or collected at the time the pledge is made, and shall be effective, valid, and binding and enforceable against the authority, the Treasurer, the beneficiaries of the basic residential earthquake insurance issued from time to time, and all others asserting rights in the surcharges to the extent set forth, and in accordance with, the terms of the pledge contained in the credit facilities or bonds, as the case may be, whether or not those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act.

SEC. 3. The sum of five hundred thousand dollars ($500,000) is hereby appropriated to the Department of Insurance from the California Residential Earthquake Recovery Fund in order to implement this act.

CHAPTER 945

An act to amend, repeal, and add Sections 17526, 17553, 17555, 17557, 17558, 17558.5, and 17562 of, and to add Sections 17561.5 and 17561.6 to, the Government Code, and to amend and repeal Section 2246 of the Revenue and Taxation Code, relating to state-mandated local programs.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. This act shall be known and may be cited as the Ayala-Monteith-Johannessen Mandate Relief and Reform Act of 1995.

SEC. 2. Section 17526 of the Government Code is amended to read:

17526. (a) All meetings of the commission shall be open to the public, except that the commission may meet in executive session to consider the appointment or dismissal of officers or employees of the commission or to hear complaints or charges brought against a member, officer, or employee of the commission.

(b) This section shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 17526 is added to the Government Code, to read:

17526. (a) All meetings of the commission shall be open to the public, except that the commission may meet in executive session to consider the appointment or dismissal of officers or employees of the commission or to hear complaints or charges brought against a member, officer, or employee of the commission.

(b) The commission shall meet at least once every month.

(c) The time and place of meetings may be set by resolution of the commission, by written petition of a majority of the members, or by written call of the chairperson. The chairperson may, for good cause, change the starting time or place, reschedule, or cancel any meeting.

(d) This section shall become operative on July 1, 1996.

SEC. 4. Section 17553 of the Government Code is amended to read:

17553. (a) The commission shall adopt procedures for receiving claims pursuant to this article and for providing a hearing on those claims. The hearing procedure shall provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, and any other interested person. Hearing of a claim may be postponed at the request of the claimant, without prejudice.

(b) This section shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 17553 is added to the Government Code, to read:

17553. (a) The commission shall adopt procedures for receiving claims pursuant to this article and for providing a hearing on those claims. The hearing procedure shall provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, and any other interested person. The procedures shall ensure that a statewide cost estimate is adopted within 18 months after receipt of a test claim or six months after an

undisputed test claim, except for any extensions or postponements by the claimant, or if incomplete information is submitted by the claimant, when a determination is made by the commission that a mandate exists. Hearing of a claim may be postponed at the request of the claimant, without prejudice, until the next scheduled hearing.

(b) The procedures adopted by the commission pursuant to subdivision (a) shall include the following:

(1) Provisions for consolidating test claims relating to the same statute or executive order filed with the commission with time limits that do not exceed 30 days from the initial filing for consolidating the test claims and for claimants to designate a single contact for information regarding the test claim.

(2) Provisions for claimants to designate a single claimant for a test claim relating to the same statute or executive order filed with the commission, with time limits that do not exceed 30 days from the initial filing for making that designation.

(c) If a completed test claim is not received by the commission within 30 calendar days from the date that an incomplete test claim was returned by the commission, the original test claim filing date may be disallowed, and a new test claim may be accepted on the same statute or executive order.

(d) This section shall become operative on July 1, 1996.

SEC. 6. Section 17555 of the Government Code is amended to read:

17555. (a) The commission, within 10 days after receipt of a test claim based upon a statute or executive order, shall set a date for a public hearing on the claim within a reasonable time. The test claim may be based upon estimated costs that a local agency or school district may incur as a result of the statute or executive order and may be filed at any time after the statute is enacted or the executive order is adopted. The claim shall be submitted in a form prescribed by the commission. After a hearing in which the claimant and any other interested organization or individual may participate, the commission shall determine if there are costs mandated by the state.

(b) This section shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 17555 is added to the Government Code, to read:

17555. (a) The commission, within 10 days after receipt of a test claim based upon a statute or executive order, shall set a date for a public hearing on the claim within 75 days. The test claim may be based upon estimated costs that a local agency or school district may incur as a result of the statute or executive order and may be filed at any time after the statute is enacted or the executive order is adopted. The claim shall be submitted in a form prescribed by the commission. After a hearing in which the claimant and any other interested

organization or individual may participate, the commission shall determine if there are costs mandated by the state.

(b) This section shall become operative on July 1, 1996.

SEC. 8. Section 17557 of the Government Code is amended to read:

17557. (a) If the commission determines there are costs mandated by the state pursuant to Section 17555, it shall determine the amount to be subvened to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order. The successful test claimants shall submit proposed parameters and guidelines within 60 days of adoption of a statement of decision on a test claim. At the request of a successful test claimant, the commission may provide for one or more extensions of this 60-day period at any time prior to its adoption of the parameters and guidelines and for any length of time the commission specifies. If proposed parameters and guidelines are not submitted within the 60-day period and the commission has not granted an extension, then the commission shall notify the test claimant that the amount of reimbursement the test claimant is entitled to for the first 12 months of incurred costs will be reduced by 20 percent, unless the test claimant can demonstrate to the commission why an extension of the 60-day period is justified. A local agency, school district, and the state may file a claim or request with the commission to amend, modify, or supplement the parameters or guidelines. The commission may, after public notice and hearing, amend, modify, or supplement the parameters and guidelines.

(b) In adopting parameters and guidelines, the commission may adopt an allocation formula or uniform allowance which would provide for reimbursement of each local agency or school district of a specified amount each year.

(c) The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for costs incurred, provided, however, that the commission shall not specify therein any fiscal year for which payment could be provided in the annual Budget Act. A test claim shall be submitted on or before December 31 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

(d) This section shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 17557 is added to the Government Code, to read:

17557. (a) If the commission determines there are costs mandated by the state pursuant to Section 17555, it shall determine the amount to be subvened to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive

order. The successful test claimants shall submit proposed parameters and guidelines within 30 days of adoption of a statement of decision on a test claim. At the request of a successful test claimant, the commission may provide for one or more extensions of this 30-day period at any time prior to its adoption of the parameters and guidelines. If proposed parameters and guidelines are not submitted within the 30-day period and the commission has not granted an extension, then the commission shall notify the test claimant that the amount of reimbursement the test claimant is entitled to for the first 12 months of incurred costs will be reduced by 20 percent, unless the test claimant can demonstrate to the commission why an extension of the 30-day period is justified. A local agency, school district, and the state may file a claim or request with the commission to amend, modify, or supplement the parameters or guidelines. The commission may, after public notice and hearing, amend, modify, or supplement the parameters and guidelines.

(b) In adopting parameters and guidelines, the commission may adopt an allocation formula or uniform allowance which would provide for reimbursement of each local agency or school district of a specified amount each year.

(c) The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for costs incurred, provided, however, that the commission shall not specify therein any fiscal year for which payment could be provided in the annual Budget Act. A test claim shall be submitted on or before December 31 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

(d) This section shall become operative on July 1, 1996.

SEC. 10. Section 17558 of the Government Code is amended to read:

17558. (a) The commission shall submit the adopted parameters and guidelines to the Controller. All claims relating to a statute or executive order that are filed after the determination of the test claim pursuant to Section 17557 shall be transferred to the Controller who shall pay and audit the claims from funds made available for that purpose.

(b) The Controller shall prepare claiming instructions for each mandate that requires state reimbursement to assist local agencies and school districts in claiming costs to be reimbursed. In preparing claiming instructions, the Controller may request the assistance of other state agencies. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines provided by the commission and approved by the Legislature.

(c) On behalf of any authorized state agency, the Controller shall expeditiously prepare and issue new or revised claiming instructions for new mandates that require state reimbursement that have been established by commission action pursuant to Section 17555 or after

any decision or order of the commission pursuant to Section 17551, and for which funding is provided pursuant to Section 17610, the Budget Act, or other provisions.

(d) This section shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. Section 17558 is added to the Government Code, to read:

17558. (a) The commission shall submit the adopted parameters and guidelines to the Controller. All claims relating to a statute or executive order that are filed after the determination of the test claim pursuant to Section 17557 shall be transferred to the Controller who shall pay and audit the claims from funds made available for that purpose.

(b) The Controller shall prepare claiming instructions for each mandate that requires state reimbursement to assist local agencies and school districts in claiming costs to be reimbursed no later than 30 days after receiving the adopted parameters and guidelines from the commission. In preparing claiming instructions, the Controller may request the assistance of other state agencies. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines provided by the commission and approved by the Legislature.

(c) On behalf of any authorized state agency, the Controller shall, within 30 days, prepare and issue new or revised claiming instructions for new mandates that require state reimbursement that have been established by commission action pursuant to Section 17555 or after any decision or order of the commission pursuant to Section 17551, and for which funding is provided pursuant to Section 17610, the Budget Act, or other provisions.

(d) This section shall become operative on July 1, 1996.

SEC. 12. Section 17558.5 of the Government Code is amended to read:

17558.5. (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than four years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

(b) The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.

(c) Nothing in this section shall be construed to limit the adjustment of payments when inaccuracies are determined to be the result of the intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the claimant or inability to reach agreement on terms of final settlement.

(d) This section shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 13. Section 17558.5 is added to the Government Code, to read:

17558.5. (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

(b) The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.

(c) Nothing in this section shall be construed to limit the adjustment of payments when inaccuracies are determined to be the result of the intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the claimant or inability to reach agreement on terms of final settlement.

(d) This section shall become operative on July 1, 1996.

SEC. 14. Section 17561.5 is added to the Government Code, to read:

17561.5. (a) The Controller shall pay any eligible claims pursuant to Section 17561 within 60 days of the filing deadline.

(b) The payment of a claim shall include interest at the Pooled Money Investment Account rate if the payment is more than 12 months after adoption of the statewide costs estimate for an initial claim or more than 12 months after subsequent claims relating to that same statute or executive order.

(c) This section shall become operative on July 1, 1996.

SEC. 15. Section 17561.6 is added to the Government Code, to read:

17561.6. (a) A budget act item or appropriation pursuant to this part for reimbursement of claims shall include an amount necessary to reimburse any interest due pursuant to Section 17561.5.

(b) This section shall become operative on July 1, 1996.

SEC. 16. Section 17562 of the Government Code is amended to read:

17562. (a) The Legislature hereby finds and declares that the increasing revenue constraints on state and local government and the increasing costs of financing state-mandated local programs make evaluation of the cumulative effects of state-mandated local programs imperative. Accordingly, it is the intent of the Legislature to establish a method for regularly reviewing the costs of state-mandated local programs, by evaluating the benefit of previously enacted mandates.

(b) The Legislative Analyst may review and report to the Legislature with regard to any statute or executive order which creates a state-mandated local program. The Legislative Analyst may recommend that the Legislature continue, eliminate, or modify any provision of law reviewed pursuant to this subdivision.

(c) This section shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 17562 is added to the Government Code, to read:

17562. (a) The Legislature hereby finds and declares that the increasing revenue constraints on state and local government and the increasing costs of financing state-mandated local programs make evaluation of the cumulative effects of state-mandated local programs imperative. Accordingly, it is the intent of the Legislature to establish a method for regularly reviewing the costs of state-mandated local programs, by evaluating the benefit of previously enacted mandates.

(b) (1) The Legislative Analyst shall review and report to the Legislature with regard to any statute or executive order which creates a state-mandated local program. The Legislative Analyst shall recommend that the Legislature continue, eliminate, or modify any provision of law reviewed pursuant to this subdivision. The recommendations may be by subject area or by year or years of enactment. The report and recommendations shall be submitted to the Legislature by September 1 each year.

(2) The Department of Finance shall review all statutes enacted each year that contain provisions making inoperative Section 2229 or Section 2230 of the Revenue and Taxation Code or Section 17561 or Section 17565 that have resulted in costs or revenue losses mandated by the state that were not identified when the statute was enacted. The review shall identify the costs or revenue losses involved in complying with the provisions of the statutes. The Department of Finance shall also review all statutes enacted each year that may result in cost savings authorized by the state. The Department of Finance shall submit an annual report of the review required by this subdivision, together with the recommendations as it may deem appropriate, by September 1 each year.

(c) It is the intent of the Legislature that the Assembly Committee on Local Government and the Senate Committee on Local Government hold a joint hearing each year regarding the following:

(1) The reports and recommendations submitted pursuant to subdivision (b).

(2) The reports submitted pursuant to Sections 17570, 17600, and 17601.

(3) Legislation to continue, eliminate, or modify any provision of law reviewed pursuant to this subdivision. The legislation may be by subject area or by year or years of enactment.

(d) This section shall become operative on July 1, 1996.

SEC. 18. Section 2246 of the Revenue and Taxation Code is amended to read:

2246. (a) Before the end of each calendar year the Department of Finance shall review all statutes enacted during that calendar year which contain provisions making inoperative Section 2229 or 2230 or Section 17561 or 17565 of the Government Code that have resulted in costs or revenue losses mandated by the state which were not identified when the statute was enacted. The review shall identify the costs or revenue losses involved in complying with the provisions of the statutes. The Department of Finance shall also review all statutes enacted in the calendar year which may result in cost savings authorized by the state. The Department of Finance shall submit to the Legislature an annual report of the review required by this section, together with the recommendations as it may deem appropriate.

(b) This section shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 946

An act to amend Sections 2159 and 18108 of the Elections Code, relating to elections.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 2159 of the Elections Code is amended to read:

2159. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 2158, any person who, in exchange for money or other valuable consideration, assists another to register to vote by receiving the completed affidavit of registration from the elector, shall sign in

his or her handwriting and affix directly on the affidavit of registration his or her full name, telephone number, and address, and the name and telephone number of the person, company, or organization, if any, that agrees to pay money or other valuable consideration for the completed affidavit of registration.

(b) Any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration, shall maintain a list of the names, addresses, and telephone numbers of all individuals that the person, company, or other organization has agreed to compensate for assisting others to register to vote, and shall provide to each person receiving that consideration a written statement of that person's personal responsibilities and liabilities under Sections 18100, 18101, 18103, 2138, 2139, and 2158. Receipt of the written statement shall be acknowledged, in writing, by the person receiving the consideration, and the acknowledgment shall be kept by the person, company, or organization that agrees to compensate that person. All records required by this subdivision shall be maintained for a minimum of three years, and shall be made available to the elections official, the Secretary of State, or an appropriate prosecuting agency, upon demand. As an alternative to maintaining the records required by this subdivision, the records may be filed with the county elections official, who shall retain those records for a minimum of three years. The county elections official may charge a fee, not to exceed actual costs, for storing records pursuant to this subdivision.

(c) Failure to comply with subdivision (a) or (b) shall not cause the invalidation of the registration of the voter.

(d) No person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person to assist another to register to vote by receiving the completed affidavit of registration shall render the payment or promised consideration unless the information specified in subdivision (a) has been affixed personally on the affidavit in the handwriting of the person with whom the agreement for payment was made.

SEC. 2. Section 18108 of the Elections Code is amended to read:

18108. (a) Except as provided in subdivision (d), any person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, and fails to comply with subdivision (a) of Section 2159, is guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months or when the failure to comply is found to be willful, not exceeding one year, or both.

(b) Any person who receives money or other valuable consideration to assist another to register to vote by receiving the

completed affidavit of registration from the elector, upon a third or subsequent conviction, on charges brought and separately tried, for failure to comply with subdivision (a) of Section 2159 shall be punished by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail not to exceed one year, or both.

(c) This section shall not apply to any public agency or its employees that is designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), when an elector asks for assistance to register to vote during the course and scope of the agency's normal business.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 947

An act to amend Sections 7852.2, 8275, 8280.1, 8280.2, 8280.3, 8280.4, 8280.5, 8280.6, and 8598 of, to add Section 8279.1 to, and to repeal Section 8280.7 of, the Fish and Game Code, relating to commercial fishing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 7852.2 of the Fish and Game Code is amended to read:

7852.2. Notwithstanding any other provision of law, commercial fishing licenses or permits for which there is a renewal application deadline may not be renewed after that deadline except as provided by this section:

(a) A penalty of fifty dollars ($50) shall be paid in addition to the fee for renewal of commercial fishing licenses or permits that are submitted on or before the last day of the next month immediately following the renewal deadline. This section does not apply to permits issued pursuant to Section 8235 or 8550. The department shall

deny all applications for renewal received after the last day of the next month immediately following the renewal deadline.

(b) Applications for renewal received after the last day of the next month immediately following the renewal deadline shall be returned to the applicant who may appeal to the commission for renewal. The commission shall, upon granting the appeal for renewal, assess the late penalties provided for in subdivision (a).

SEC. 2. Section 8275 of the Fish and Game Code is amended to read:

8275. Unless the provision or context otherwise requires, the definitions in this section govern the construction of this article.

(a) "Dungeness crab" or "market crab" means crab of the species Cancer magister.

(b) "Owner" means the person or persons designated as the registered owner of a vessel on a certificate of documentation issued by the United States Coast Guard or on a copy of the vessel registration issued by the vessel registration agency of the state where the owner is a resident. For purposes of this subdivision, in California, the vessel registration agency is the Department of Motor Vehicles.

(c) "Reconstruction" means major work on the hull of a vessel to make that vessel operable in the California crab fishery if that work may reasonably be expected to be of a duration that will preclude operation of that vessel in the crab fishery for the length of the crab season or longer.

(d) "Rock crab" means any crab of the genus Cancer other than Dungeness crab and includes rock crab (Cancer antennarius), red crab (Cancer productus), and yellow crab (Cancer anthonyi).

(e) "Under construction" means having plans and materials and proceeding with work toward the completion of an operational Dungeness crab fishing vessel.

SEC. 3. Section 8279.1 is added to the Fish and Game Code, to read:

8279.1. It is unlawful for any vessel licensed or permitted to take, possess, or land Dungeness crab in another state for commercial purposes, if that vessel's port of registration is in another state, as stated on the United States Coast Guard vessel documentation for that vessel or, if the vessel is undocumented, on the state registration of that vessel, to take or land Dungeness crab in District 10 for commercial purposes after December 1 of any year if any delay in the opening of the commercial Dungeness crab fishing season after that December 1 has been ordered in the state or states for which the vessel has been issued a license or permit to take, possess, or land Dungeness crab.

SEC. 4. Section 8280.1 of the Fish and Game Code is amended to read:

8280.1. (a) On or after April 1, 1995, no person shall use a vessel to take, possess, or land Dungeness crab using Dungeness crab traps

authorized pursuant to Section 9011, unless the owner of that vessel has been issued a revocable Dungeness crab vessel permit for that vessel. A Dungeness crab vessel permit is valid, unless revoked, from April 1 to March 31 of the year following, or, if issued after April 1, for the remainder thereof.

(b) A Dungeness crab vessel permit may be issued only to the following persons for use on qualifying vessels:

(1) A person licensed pursuant to Section 7850 or Article 7 (commencing with Section 8030) who is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and a minimum of four landings in each of three Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, have been made from that vessel in this state as documented by landing receipts delivered to the department pursuant to Section 8046. This paragraph includes any person purchasing a vessel qualifying pursuant to this paragraph.

(2) A person licensed pursuant to Section 7850 or Article 7 (commencing with Section 8030) who is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and a minimum of four landings in one of the Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, have been made from that vessel in this state as documented by landing receipts delivered to the department pursuant to Section 8046, who the department finds to have been unable, due to illness or injury or any other hardship, to make a minimum of four landings in each of two of the previous three Dungeness crab seasons, and who, in good faith, intended to participate in the Dungeness crab fishery in those seasons.

(3) A person licensed pursuant to Section 7850 who meets the requirements of Section 8101 and who, notwithstanding Section 8101, is, at the time of application, the owner of a fishing vessel that is not equipped for trawling with a net and that has been registered pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years. Not more than one Dungeness crab vessel permit shall be issued to any person qualifying under Section 8101 and all permits issued under Section 8101 shall, notwithstanding paragraph (1) of subdivision (a) of Section 8280.3, be nontransferable. A person qualifying for a permit under this paragraph shall have participated in the Dungeness crab fishery on or before March 31, 1994, as documented by landing receipts in that person's name for not less than four landings of Dungeness crab taken in a crab trap in a Dungeness crab season and delivered to the department pursuant to Section 8046. No person shall be issued a permit under this paragraph if that person has been issued a permit under any other provision of this section for another vessel. For purposes of Section 8101, "participated in the fishery" means made not less than four landings

of Dungeness crab taken by traps in that person's name in one Dungeness crab season. The department shall separately identify permits issued pursuant to this paragraph and those permits shall become immediately null and void upon the death of the permittee. The department shall not issue or renew any permit under this paragraph to a person if the person failed to meet the participation requirements of four landings in one season prior to April 1, 1994, or has been issued a Dungeness crab permit for a vessel under any other paragraph of this subdivision.

(4) A person who has a current license issued pursuant to Section 7852 (A) who held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, and who has participated in the Dungeness crab fishery between November 1, 1984, and April 1, 1994, and is the owner of a vessel that has been registered with the department in each of the 1991–92, 1992–93, and 1993–94 permit years but did not make landings or the department records do not indicate a minimum of four landings per season for three Dungeness crab seasons from that vessel or in that person's name because of a partnership or other working arrangement where the person was working aboard another vessel engaged in the Dungeness crab fishery in California, (B) who held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, and who is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and from which a minimum of four landings utilizing traps were made in at least one Dungeness crab season in the period between November 1, 1984, and April 1, 1994, and from which either four landings were made utilizing traps or landings in excess of 10,000 pounds were made utilizing traps in each of two other Dungeness crab seasons in that same period, as documented by landing receipts delivered to the department pursuant to Section 8046, or (C) who held a Dungeness crab vessel permit issued under Section 8280 as it read on April 1, 1994, or was an officer in a California corporation that was licensed pursuant to Article 7 (Commencing with section 8030) as of April 1, 1994, and began construction or reconstruction of a vessel on or before January 1, 1992, for the purpose of engaging in the Dungeness crab fishery, including the purchase of equipment and gear to engage in that fishery in California. A person may be issued a permit under this paragraph only if the person intended in good faith to participate in the California Dungeness crab fishery, and a denial of a permit would create a financial hardship on that person and, for purposes of determining financial hardship, the applicant is a nonresident and cannot participate with his or her vessel or vessels in the Dungeness crab fishery of another state because of that state's limited entry or moratorium on the issuance of permits for the taking of Dungeness crab.

(5) A person who has a current license issued pursuant to Section 7852 who held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, and who made a minimum of four landings of Dungeness crab taken by traps in each of three Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, in his or her name in this state from a vessel owned by that person, as documented by landing receipts delivered to the department pursuant to Section 8046, and who, between April 1, 1991, and January 1, 1995, purchased, contracted to purchase, or constructed a vessel, not otherwise qualifying pursuant to paragraph (1), (2), or (4), and who has continuously owned that vessel since its purchase or construction, and either (A) has used that vessel for the take of Dungeness crab in this state on or before March 31, 1995, as documented by one or more landing receipts delivered to the department pursuant to Section 8046, or (B) intended in good faith, based on evidence that the department and the review panel may require, including investment in crab gear, to enter that vessel in this state's Dungeness crab fishery not later than December 1, 1995. Not more than one permit may be issued to any one person under this paragraph.

(6) A person who held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, and who made a minimum of four landings utilizing traps in this state in each of three Dungeness crab seasons in the period between November 1, 1984, and April 1, 1994, in his or her name from a vessel operated by that person as documented by landing receipts delivered to the department pursuant to Section 8046, who currently does not own a vessel in his or her name, and who has not sold or transferred a vessel otherwise qualifying for a permit under this section, may be issued a permit for a vessel not greater in size than the vessel from which the previous landings were made, and, in no event, for a vessel of more than 60 feet overall length, to be placed on a vessel that the person purchases or contracts for construction on or before April 1, 1996. Permits issued under this paragraph shall be nontransferable and shall not be used for a vessel not owned by that person, and shall be revoked if the person (A) fails to renew the permit or annually renew his or her commercial fishing license pursuant to Section 7852 or (B) is or becomes the owner of another vessel permitted to operate in the Dungeness crab fishery pursuant to this section.

(c) The department may require affidavits offered under penalty of perjury from persons applying for permits under subdivision (b) or from witnesses corroborating the statements of a person applying for a Dungeness crab vessel permit. Affidavits offered under penalty of perjury shall be required of an applicant if the department cannot locate records required to qualify under subdivision (b).

(d) No person shall be issued a Dungeness crab vessel permit under this section for any vessel or renew any vessel permit for any

vessel under this section unless that person is currently licensed pursuant to Section 7852.

(e) Notwithstanding Section 7852.2 or subdivision (e) of Section 8280.2, the department may issue a Dungeness crab vessel permit that has not been applied for by the application deadline if the department finds that the failure to apply was a result of a mistake or hardship, as established by evidence the department may require, the late application is made not later than October 15, 1995, and payment is made by the applicant of a late fee of two hundred fifty dollars ($250) in addition to all other costs for the permit.

(f) The department may waive the requirement that a person own a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years for one of those required years under this section only if the vessel was registered and used in the California Dungeness crab fishery during the registration year immediately prior to the year for which the waiver is sought and was registered and used in the California Dungeness crab fishery after the year for which the waiver is sought and if the reason for the failure to register in the year for which the waiver is sought was due to a death, illness, or injury, or other hardship, as determined by the review panel, that prevented the vessel from being registered and operated in the fishery for that registration year.

(g) If any person submits false information for the purposes of obtaining a Dungeness crab vessel permit under this section, the department shall revoke that permit, if issued, revoke the person's commercial fishing license that was issued pursuant to Section 7850 for a period of not less than five years, and revoke the commercial boat registration for a period of not less than five years of any vessel registered to that person pursuant to Section 7881 of which that person is the owner.

(h) This section shall become inoperative on April 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 8280.2 of the Fish and Game Code is amended to read:

8280.2. (a) The owner of a Dungeness crab vessel, for purposes of this section, may include a person with a bona fide contract for the purchase of a vessel who otherwise meets all other qualifications for a Dungeness crab vessel permit. If a contract is found to be fraudulent or written or entered into for the purposes of circumventing qualification criteria for the issuance of a permit, the applicant shall be permanently ineligible for a Dungeness crab vessel permit.

(b) A Dungeness crab vessel permit shall be issued only to the person owning the vessel at the time of application for that permit. No person shall be issued more than one permit for each vessel

owned by that person and qualifying for a permit pursuant to Section 8280.1.

(c) A Dungeness crab vessel permit shall be issued only to the owner of a vessel taking crab by traps. No permit shall be issued to the owner of a vessel using trawl or other nets unless the owner of that vessel qualifies for a permit pursuant to paragraph (1) of subdivision (b) of Section 8280.1. No trawl or other net vessel authorized under this code to take Dungeness crab incidental to the taking of fish in trawl or other nets shall be required to possess a Dungeness crab vessel permit.

(d) Dungeness crab vessel permits shall not be combined or otherwise aggregated for the purpose of replacing smaller vessels in the fishery with a larger vessel, and a permit shall not be divided or otherwise separated for the purpose of replacing a vessel in the fishery with two or more smaller vessels.

(e) All applications for Dungeness crab vessel permits shall be received by the department or, if mailed, postmarked, by April 30, 1995. Persons qualifying for a Dungeness crab vessel permit under paragraph (4) or (5) of subdivision (b) of Section 8280.1 seeking a Dungeness crab vessel permit shall apply for the permit within 30 days of the effective date of the amendment of this section enacted in the 1995 portion of the 1995–96 Regular Session. Renewals of all dungeness crab vessel permits shall be received by the department, or, if mailed, postmarked, by April 30 of each year. In order for a vessel to retain eligibility, a permit shall be obtained each year subsequent to the initial permit year and the vessel shall be registered pursuant to Section 7881. No minimum landings of Dungeness crab shall be required annually to be eligible for a Dungeness crab vessel permit.

(f) This section shall become inoperative on April 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 8280.3 of the Fish and Game Code is amended to read:

8280.3. (a) Notwithstanding Article 9 (commencing with Section 8100) of Chapter 1 and except as provided in this section, a Dungeness crab vessel permit shall not be transferred.

(1) The owner of a vessel to whom a Dungeness crab vessel permit has been issued shall transfer the permit for the use of that vessel upon the sale of the vessel by the permitholder to the person purchasing the vessel. Thereafter, upon notice to the department, the person purchasing the vessel may use the vessel for the taking and landing of Dungeness crab for any and all of the unexpired portion of the permit year, and that person is eligible for a permit pursuant to Section 8280.1 for the use of that vessel in subsequent years. The person purchasing the vessel may not transfer the permit for use of

that vessel in the Dungeness crab fishery to another replacement vessel during the same permit year.

(2) The owner of a vessel to whom the Dungeness crab vessel permit has been issued may transfer the permit to a replacement vessel of equivalent capacity, except as specified in this section. Thereafter, upon notice to the department and payment of the transfer fee specified in Section 8280.6, the replacement vessel may be used for the taking and landing of Dungeness crab for any and all of the unexpired portion of the permit year and that person is eligible for a permit pursuant to Section 8280.1 for the use of that replacement vessel in subsequent years.

The owner of a permitted vessel may transfer the permit to a vessel of greater capacity that was owned by that person on or before November 15, 1995, not to exceed 10 feet longer in length overall than the vessel for which the permit was originally issued or to a vessel of greater capacity purchased after November 15, 1995, not to exceed five feet longer in length overall than the vessel for which the permit was originally issued.

The department, upon recommendation of the Dungeness crab review panel, may authorize the owner of a permitted vessel to transfer the permit to a replacement vessel that was owned by that person on or before April 1, 1996, that does not fish with trawl nets that is greater than five feet longer in length overall than the vessel for which the permit was originally issued, if all of the following conditions are satisfied:

(A) A vessel of a larger size is essential to the owner for participation in another fishery other than a trawl net fishery.

(B) The owner held a permit on or before January 1, 1995, for the fishery for which a larger vessel is needed and has participated in that fishery.

(C) The permit for the vessel from which the permit is to be transferred qualified pursuant to paragraph (1) of subdivision (b) of Section 8280.1.

(D) The vessel to which the permit is to be transferred does not exceed 20 feet longer in length overall than the vessel for which the permit was originally issued and the vessel to which the permit is to be transferred does not exceed 60 feet in overall length.

No transfer of a permit to a larger vessel shall be allowed more than one time. If a permit is transferred to a larger vessel, any Dungeness crab vessel permit for that permit year or any subsequent permit years for that larger vessel may not be transferred to another larger vessel. The department shall not thereafter issue a Dungeness crab vessel permit for the use of the original vessel from which the permit was transferred, except that the original vessel may be used to take or land Dungeness crab after that transfer if its use is authorized pursuant to another Dungeness crab vessel permit subsequently transferred to that vessel pursuant to this paragraph.

(3) Upon the written approval of the department, the owner of a vessel to whom the Dungeness crab vessel permit has been issued may temporarily transfer the permit to another replacement vessel, for which use in the Dungeness crab fishery is not permitted pursuant to this section or Section 8280.1, for a period of not more than six months during the current permit year if the vessel for which the permit was issued is seriously damaged, suffers major mechanical breakdown, or is lost or destroyed, as determined by the department, upon approval of the director. The owner of the vessel shall submit proof that the department may reasonably require to establish the existence of the conditions of this paragraph. Upon approval by the director, the owner of a lost or destroyed vessel granted a six month temporary transfer under this section may be granted an additional six month extension of the temporary transfer.

(4) Upon written approval of the department, the owner of a vessel to whom the Dungeness crab vessel permit has been issued may retain that permit upon the sale of that permitted vessel for the purpose of transferring the permit to another vessel to be purchased by that individual within one year of the time of sale of the vessel for which the permit was originally issued if the requirements of this section are satisfied, including the payment of transfer fees. If the permit is not transferred to a new vessel owned by the person to whom the vessel permit was originally issued within one year of the sale of the vessel for which it was originally issued, or if the person does not retain ownership of the new vessel to which the permit is transferred for a period of not less than one year, the permit shall be revoked.

(5) In the event of the death or incapacity of a permitholder, the permit shall be transferred, upon application, to the heirs or assigns, or to the working partner, of the permitholder, together with the transfer of the vessel for which the permit was issued, and the new owner may continue to operate the vessel under the permit, renew the permit, or transfer the permit upon sale of the vessel pursuant to paragraph (1).

(b) This section shall become inoperative on April 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 8280.4 of the Fish and Game Code is amended to read:

8280.4. (a) The commission may revoke any Dungeness crab vessel permit issued through the submittal of false documents or statements. The commission may revoke the commercial fishing license issued pursuant to Section 7852 of any person owning a fishing vessel engaging in the taking or landing of Dungeness crab by traps for which that person has not obtained a Dungeness crab vessel permit, and the commission may revoke the registration, issued pursuant to Section 7881, for that vessel.

(b) This section shall become inoperative on April 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 8280.5 of the Fish and Game Code is amended to read:

8280.5. (a) The director shall convene a Dungeness crab review panel for the purpose of reviewing applications for Dungeness crab vessel permits pursuant to paragraphs (2) and (4) of subdivision (b) of Section 8280.1 and applications for permit transfers pursuant to Section 8280.3 if the department determines that the additional review and advice of the panel will be helpful in deciding whether to issue a permit or approve a transfer.

(b) The panel shall consist of one nonvoting representative of the department and three public voting members selected by the director to represent the Dungeness crab fishing industry. One public member shall be licensed pursuant to Article 7 (commencing with Section 8030) and active in Dungeness crab processing in this state. Two public members shall be licensed pursuant to Section 7852, one from Sonoma County or a county south of Sonoma County, and one from Mendocino County or a county north of Mendocino County, and active in the take and landing of Dungeness crab in this state. The public members shall be reimbursed for their necessary and proper expenses to participate on the panel. A public member shall serve on the panel for not more than four consecutive years.

(c) The panel may conduct its review of applications referred to it by mail or teleconference.

(d) The panel shall review each application for a permit or permit transfer referred to it by the department and shall consider all oral and written evidence presented by the applicant that is pertinent to the application under review. If the panel recommends issuance of a permit or approval of the transfer, the department may issue a Dungeness crab vessel permit pursuant to Section 8280.1 or approve a permit transfer pursuant to Section 8280.3.

(e) All appeals of denials of Dungeness crab vessel permits shall be made to the commission and may be heard by the commission if the appeal of denial is filed in writing with the commission not later than 90 days of the date of a permit denial. The commission may order the department to issue a permit upon appeal if the commission finds that the appellant qualified for a permit under this chapter.

(f) This section shall become inoperative on April 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 8280.6 of the Fish and Game Code is amended to read:

8280.6. (a) The department shall charge a fee for each Dungeness crab vessel permit of two hundred dollars ($200) for a

resident of California and four hundred dollars ($400) for a nonresident of California.

(b) The department shall charge a nonrefundable fee of two hundred dollars ($200) for each transfer of a permit authorized pursuant to paragraph (2), (4), or (5) of subdivision (a) of Section 8280.3.

(c) This section shall become inoperative on April 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10. Section 8280.7 of the Fish and Game Code is repealed.

SEC. 11. Section 8598 of the Fish and Game Code is amended to read:

8598. (a) Notwithstanding Section 8140 or subdivision (b) of Section 8597, specimens of the following groups or species shall not be taken or possessed for commercial purposes:

(1) Invertebrates:

(A) Phylum Porifera—all sponges.

(B) Genus Pelagia sp.—jellyfish.

(C) Coelenterata—corals, anemones; all species.

(D) Order Gorgonacea—all gorgonians.

(E) Order Pennatulacea—all species, except Renilla kollikeri.

(F) Feather-duster worm—Eudistylia polymorpha.

(G) Fiddler crab—Uca crenulata.

(H) Umbrella crab—Cryptolithodes sitchensis.

(I) Stalked or goose barnacles—Pollicipes sp.

(J) Giant acorn barnacle—Balanus nubilus or B. aguila.

(K) Owl limpet—Lottia gigantea.

(L) Coffee bean shells—Trivia sp.

(M) Three-winged murex—Pteropurpura trialata.

(N) Vidler's simnia—Simnia vidleri.

(O) Queen tegula—Tegula regina.

(P) Opisthobranchia (including nudibranchs)—all subclass Opisthobranchia species except:

(i) Sea hares—Aplysia californica and Aplysia vaccaria.

(ii) Hermissenda crassicornis.

(iii) Lion's mouth—Melibe leonina.

(iv) Aeolidia papillosa.

(v) Spanish shawl—Flabellina iodinea.

(2) Vertebrates:

(A) All shark and ray eggcases.

(B) Brown smoothhound sharks—Mustelus hinlei—that are less than 18 inches in a whole condition or dressed with head and tail removed.

(C) Family Agonidae—all poachers.

(D) Wolf-eel—Anarrhichthys ocellatus.

(E) Juvenile sheephead—Semicossyphus pulcher (under 6 inches).

(3) Live rocks.

(A) Rocks with living organisms attached, commonly called "live rocks," shall not be taken or possessed except as provided in subparagraph (C).

(B) Rocks shall not be broken to take marine aquaria species, and any rock displaced to access any such species shall be returned to its original position.

(C) Rocks cultured under the authority of an aquaculture registration may be possessed.

(b) Garibaldi—Hypsypops rubicundus may not be taken under a marine aquaria collector's permit from February 1 to October 31, inclusive.

(c) No organisms may be taken for marine aquaria pet trade purposes under the terms of a marine aquaria collector's permit in any of the following areas:

(1) On the north side of Santa Catalina Island from a line extending three nautical miles 90 degrees true from Church Rock to a line extending three nautical miles 270 degrees true from the extreme west end of the island.

(2) Until January 1, 2000, on the south or "back" side of Santa Catalina Island from a line extending three nautical miles 90 degrees true from Church Rock to a line extending three nautical miles 270 degrees true from the extreme west end of the island.

(3) Marine life refuges, marine reserves, ecological reserves, and state reserves.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to conform the commercial Dungeness crab season in this state with neighboring states and to regulate the fishing effort to meet the available crab resource in this year's crab season and to regulate the taking of brown smoothound sharks as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 948

An act to amend Section 8598 of the Fish and Game Code, and to add Section 425.6 to the Government Code, relating to fish.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 8598 of the Fish and Game Code is amended to read:

8598. (a) Notwithstanding Section 8140 or subdivision (b) of Section 8597, specimens of the following groups or species shall not be taken or possessed for commercial purposes:

(1) Invertebrates:

(A) Phylum Porifera—all sponges.

(B) Genus Pelagia sp.—jellyfish.

(C) Coelenterata—corals, anemones; all species.

(D) Order Gorgonacea—all gorgonians.

(E) Order Pennatulacea—all species, except Renilla kollikeri.

(F) Feather-duster worm—Eudistylia polymorpha.

(G) Fiddler crab—Uca crenulata.

(H) Umbrella crab—Cryptolithodes sitchensis.

(I) Stalked or goose barnacles—Pollicipes sp.

(J) Giant acorn barnacle—Balanus nubilus or B. aguila.

(K) Owl limpet—Lottia gigantea.

(L) Coffee bean shells—Trivia sp.

(M) Three-winged murex—Pteropurpura trialata.

(N) Vidler's simnia—Simnia vidleri.

(O) Queen tegula—Tegula regina.

(P) Opisthobranchia (including nudibranchs)—all subclass Opisthobranchia species except:

(i) Sea hares—Aplysia californica and Aplysia vaccaria.

(ii) Hermissenda crassicornis.

(iii) Lion's mouth—Melibe leonina.

(iv) Aeolidia papillosa.

(v) Spanish shawl—Flabellina iodinea.

(2) Vertebrates:

(A) All shark and ray eggcases.

(B) Brown smoothhound sharks—Mustelus hinlei.

(C) Family Agonidae—all poachers.

(D) Wolf-eel—Anarrhichthys ocellatus.

(E) Juvenile sheephead—Semicossyphus pulcher (under 6 inches).

(F) Garibaldi—Hypsypops rubicundus, except as provided in subdivision (b).

(3) Live rocks.

(A) Rocks with living organisms attached, commonly called "live rocks," shall not be taken or possessed except as provided in subparagraph (C).

(B) Rocks shall not be broken to take marine aquaria species, and any rock displaced to access any of those species shall be returned to its original position.

(C) Rocks cultured under the authority of an aquaculture registration may be possessed.

(b) Garibaldi—Hypsypops rubicundus may not be taken or possessed under a marine aquaria collector's permit until February 1, 1999, unless a study, the methodology of which is approved by the department, shows a less than significant impact on the population of the garibaldi resource from that taking. On and after February 1, 1999, garibaldi may be taken or possessed under that permit for marine aquaria pet trade purposes only from October 31 to February 1, inclusive.

(c) No organisms may be taken for marine aquaria pet trade purposes under the terms of a marine aquaria collector's permit in any of the following areas:

(1) On the north side of Santa Catalina Island from a line extending three nautical miles 90 degrees true from Church Rock to a line extending three nautical miles 270 degrees true from the extreme west end of the island.

(2) On the south or "back" side of Santa Catalina Island from a line extending three nautical miles 90 degrees true from Church Rock to a line extending three nautical miles 270 degrees true from the extreme west end of the island.

(3) Marine life refuges, marine reserves, ecological reserves, and state reserves.

SEC. 2. Section 425.6 is added to the Government Code, to read:

425.6. The garibaldi (Hypsypops rubicundus) is the official state marine fish.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 949

An act to amend Section 40717.5 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 40717.5 of the Health and Safety Code is amended to read:

40717.5. (a) Any district which proposes to adopt or amend a rule or regulation pursuant to Section 40716 or 40717, which imposes any requirement on an indirect source to reduce vehicle trips or vehicle miles traveled, including, but not limited to, any rule or regulation affecting ridesharing or alternative transportation mode strategies, shall, prior to the adoption or amendment of the rule or regulation, do all of the following:

(1) Ensure, to the extent feasible, and based upon the best available information, assumptions, and methodologies which are reviewed and adopted at a public hearing, that the proposed rule or regulation would require an indirect source to reduce vehicular emissions only to the extent that the district determines that the source contributes to air pollution by generating vehicle trips that would not otherwise occur. In complying with this paragraph, a district shall make reasonable and feasible efforts to assign responsibility for existing and new vehicle trips in a manner which equitably distributes responsibility among indirect sources.

(2) Ensure that, to the extent feasible, the proposed rule or regulation does not require an indirect source to reduce vehicular trips which are required to be reduced by other rules or regulations adopted for the same purpose.

(3) Take into account the feasibility of implementing the proposed rule or regulation.

(4) Pursuant to Section 40922, consider the cost effectiveness of the proposed rule or regulation.

(5) Determine that the proposed rule or regulation would not place any requirement on public agencies or on indirect sources which would duplicate any requirement placed upon those public agencies or indirect sources as a result of another rule or regulation adopted pursuant to Section 40716 or 40717.

(b) A district may delegate to any city or county the responsibility to implement a rule or regulation that is subject to subdivision (a). However, if an indirect source subject to the rule or regulation has sites located both within and outside of the jurisdiction of a city or county to which that responsibility has been delegated, the indirect source may elect to be subject to the implementation of that rule or

regulation only by the district. Notwithstanding Section 40454 or subdivision (b) of Section 40927, an indirect source which elects to be regulated only by a district pursuant to this subdivision may also elect to include sites under district regulation that would not otherwise be subject to district regulation, and, in that event, shall not be subject to the implementation by a city or county of any requirement contained in that rule or regulation.

(c) Any district which proposes to adopt or amend a rule or regulation which establishes employer-based trip reduction requirements shall, prior to the adoption or amendment of the rule or regulation, in addition to complying with subdivision (a), do all of the following:

(1) Ensure that the proposed rule or regulation consists of not more than the following:

(A) Provisions for the submittal of trip reduction plans by employers.

(B) Provisions for the review, approval, or disapproval of the plan by the district.

(C) Provisions for the implementation and enforcement of the plan.

(D) Provisions which ensure that an employer will not be found to be in violation of the rule or regulation for failure to achieve an average vehicle occupancy target if the employer has otherwise complied with the requirements of the rule or regulation.

(2) Hold a public hearing and adopt guidelines, which shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for determining the content of trip reduction plans which comply with this section.

(3) Authorize indirect sources subject to the rule or regulation to use alternative strategies to employer-based trip reduction programs, including, but not limited to, financial and market-based incentives, vehicle scrappage programs, and fleet conversion, which provide equivalent or greater vehicular emission reductions and which are not otherwise required to be achieved by statute or regulation.

(4) Encourage or require the use of ridesharing, vanpooling, flexible work hours, or other measures that reduce the number or length of vehicle trips.

(d) The state board, in consultation with the public, the regulated community, and other interested parties, shall develop, and adopt in a public hearing, within six months of the enactment of this section, and periodically update, a calculation methodology which shall be used by districts to determine emissions equivalency pursuant to paragraph (3) of subdivision (c). In developing the formula, the state board shall take into account and consider any suggestions made by those parties.

(e) (1) Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan, control, or condition

land use, or on the ability of a city, county, or other public agency to impose trip reduction measures pursuant to a voter-mandated growth management program.

(2) Nothing in this section provides or transfers new authority over land use to a district.

CHAPTER 950

An act to add Section 65089.10 to the Government Code, and to amend Sections 44241 and 44242 of, and to add Section 44241.5 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 65089.10 is added to the Government Code, to read:

65089.10. Any congestion management agency that is located in the Bay Area Air Quality Management District and receives funds pursuant to Section 44241 of the Health and Safety Code for the purpose of implementing paragraph (3) of subdivision (b) of Section 65089 shall ensure that those funds are expended as part of an overall program for improving air quality and for the purposes of this chapter.

SEC. 2. Section 44241 of the Health and Safety Code is amended to read:

44241. (a) Fee revenues generated under this chapter in the bay district shall be subvened to the bay district by the Department of Motor Vehicles after deducting its administrative costs pursuant to Section 44229.

(b) Fee revenues generated under this chapter shall be allocated by the bay district to implement the following mobile source and transportation control projects and programs that are included in the plan adopted pursuant to Sections 40233, 40717, and 40919:

(1) The implementation, support, and enforcement of the regionwide employer-based trip reduction regulation adopted by the bay district, and other local agency trip-reduction ordinances and programs which do not duplicate the regionwide trip-reduction regulation adopted by the bay district. As used in this paragraph, "implementation" includes review of employer-based trip reduction plans submitted by a school district.

(2) The purchase or lease of clean fuel buses for school districts and transit operators.

(3) The provision of local feeder bus or shuttle service to rail and ferry stations and to airports.

(4) The implementation and maintenance of local arterial traffic management, including, but not limited to, signal timing, transit signal preemption, bus stop relocation and "smart streets."

(5) Implementation of rail-bus integration and regional transit information systems.

(6) Implementation of demonstration projects in congestion pricing of highways, bridges, and public transit, and low-emission vehicles.

(7) Implementation of a smoking vehicles program.

(8) Implementation of an automobile buy-back scrappage program operated by a governmental agency.

(9) (A) Implementation of bicycle facility improvement projects that are included in an adopted countywide bicycle plan or congestion management program.

(B) This paragraph shall become inoperative on January 1, 1998, unless a later enacted statute deletes or extends that date.

(c) Fee revenue generated under this chapter shall be allocated by the bay district for projects and programs specified in subdivision (b) to cities, counties, the Metropolitan Transportation Commission, transit districts, or any other public agency responsible for implementing one or more of the specified projects or programs. Fee revenues shall not be used for any planning activities that are not directly related to the implementation of a specific project or program.

(d) Not less than 40 percent of fee revenues shall be allocated to the entity or entities designated pursuant to subdivision (e) for projects and programs in each county within the bay district based upon the county's proportionate share of fee-paid vehicle registration.

(e) In each county, one or more entities may be designated as the overall program manager for the county by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county. The resolution shall specify the terms and conditions for the expenditure of funds. The entities so designated shall be allocated the funds pursuant to subdivision (d) in accordance with the terms and conditions of the resolution.

(f) Any county, or entity designated pursuant to subdivision (e), that receives funds pursuant to this section shall, at least once a year, hold one or more public meetings for the purpose of adopting criteria for expenditure of the funds and to review the expenditure of revenues received pursuant to this section by any designated entity.

SEC. 3. Section 44241.5 is added to the Health and Safety Code, to read:

44241.5. The bay district board shall hold an annual public hearing to review the expenditure of revenues received by the bay district pursuant to Section 44241 to determine their effectiveness in improving air quality.

SEC. 4. Section 44242 of the Health and Safety Code is amended to read:

44242. (a) Any agency which receives funds pursuant to Section 44241 shall, at least once every two years, undertake an audit of each program or project funded. The audit shall be conducted by an independent auditor selected by the bay district in accordance with Division 2 (commencing with Section 1100) of the Public Contract Code. The district shall deduct any audit costs which will be incurred pursuant to this section prior to distributing fee revenues to cities, counties, or other agencies pursuant to Section 44241.

(b) Upon completion of an audit conducted pursuant to subdivision (a), the bay district shall do both of the following:

(1) Make the audit available to the public and to the affected agency upon request.

(2) Review the audit to determine if the fee revenues received by the agency were spent for the reduction of air pollution from motor vehicles pursuant to the plan prepared pursuant to Sections 40233 and 40717.

(c) If, after reviewing the audit, the bay district determines that the revenues from the fees may have been expended in a manner which is contrary to this chapter or which will not result in the reduction of air pollution from motor vehicles pursuant to that plan, the district shall do all of the following:

(1) Notify the agency of its determination.

(2) Within 45 days of the notification pursuant to paragraph (1), hold a public hearing at which the agency may present information relating to expenditure of the revenues from the fees.

(3) After the public hearing, if the district determines that the agency has expended the revenues from the fees in a manner which is contrary to this chapter or which will not result in the reduction of air pollution from motor vehicles pursuant to the plan prepared pursuant to Sections 40233 and 40717, the district shall withhold these revenues from the agency in an amount equal to the amount which was inappropriately expended. Any revenues withheld pursuant to this paragraph shall be redistributed to the other cities within the county, or to the county, to the extent the district determines that they have complied with the requirements of this chapter.

(d) Any agency which receives funds pursuant to Section 44241 shall encumber and expend the funds within two years of receiving the funds, unless an application for funds pursuant to this chapter states that the project will take a longer period of time to implement and is approved by the district or the agency designated pursuant to subdivision (e) of Section 44241. In any other case, the district or agency may extend the time beyond two years, if the recipient of the funds applies for that extension and the district or agency, as the case may be, finds that significant progress has been made on the project for which the funds were granted.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 951

An act to amend Sections 66631, 66663.2, and 66667 of, and to add Section 11354.1 to, the Government Code, relating to the San Francisco Bay Conservation and Development Commission.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 11354.1 is added to the Government Code, to read:

11354.1. (a) For purposes of this section, "commission" means the San Francisco Bay Conservation and Development Commission.

(b) Except as provided in subdivision (d), this chapter does not apply to any policy, plan, or guideline adopted by the commission pursuant to Chapter 5 (commencing with Section 66650) of Title 7.2 of this code or Division 19 (commencing with Section 29000) of the Public Resources Code prior to January 1, 1996.

(c) The issuance or denial by the commission of any permit pursuant to subdivision (a) of Section 66632, and the issuance or denial by, or appeal to, the commission of any permit pursuant to Chapter 6 (commencing with Section 29500) of Division 19 of the Public Resources Code, are not subject to this chapter.

(d) (1) Any amendments or other changes to the San Francisco Bay Plan or to a special area plan pursuant to Chapter 5 (commencing with Section 66650) of Title 7.2, and amendments or other changes to the Suisun Marsh Protection Plan, as defined in Section 29113 of the Public Resources Code, or in the Suisun Marsh local protection program, as defined in Section 29111 of the Public Resources Code, adopted by the commission on and after January 1, 1996, shall be submitted to the office.

(2) The commission shall include in its submittal to the office pursuant to paragraph (1) both all of the following documents:

(A) A clear and concise summary of any regulatory provision adopted or approved by the commission as part of the proposed change for publication in the California Code of Regulations.

(B) The administrative record for the proceeding, and a list of documents relied upon in making the change. Proposed additions to the plans shall be indicated by underlined text, and proposed deletions shall be indicated by strike through text in documents submitted as part of the administrative record for the proceeding.

(3) The office shall review the regulatory provisions to determine compliance with the standards of necessity, authority, clarity, consistency, reference, and nonduplication set forth in subdivision (a) of Section 11349.1. The office shall also review the responses to public comments prepared by the commission to determine compliance with the public participation requirements of Sections 11000 to 11007, inclusive, of Title 14 of the California Code of Regulations, and to ensure that the commission considers all relevant matters presented to it before adopting, amending, or repealing any regulatory provision, and that the commission explains the reasons for not modifying a proposed plan change to accommodate an objection or recommendation. The office shall restrict its review to the regulatory provisions and the administrative record of the proceeding. Sections 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the review by the office to the extent that those sections are consistent with this section.

(4) In reviewing proposed changes to the commission's plans for the criteria specified in subdivision (a) of Section 11349.1, the office shall consider the clarity of the proposed plan change in the context of the commission's existing plans.

(5) The proposed plan or program change subject to this subdivision shall not become effective unless and until the regulatory provisions are approved by the office in accordance with subdivision (a) of Section 11349.3.

(6) Upon approval of the regulatory provisions, the office shall transmit to the Secretary of State for filing the clear and concise summary of the regulatory provisions submitted by the commission.

(e) Except as provided in subdivisions (b) and (c), the adoption of any regulation by the commission shall be fully subject to this chapter.

SEC. 2. Section 66631 of the Government Code is amended to read:

66631. In making the review, the commission shall cooperate to the fullest extent possible with the Association of Bay Area Governments; and shall, to the fullest extent possible, coordinate its planning with planning by local agencies, which shall retain the responsibility for local land use planning. To avoid duplication of work, the commission shall make maximum use of data and information available from the planning programs of the State Office of Planning and Research, the Association of Bay Area Governments,

the San Francisco Bay Regional Water Quality Control Board, the cities and counties in the San Francisco Bay area, and other public and private planning agencies.

SEC. 3. Section 66663.2 of the Government Code is amended to read:

66663.2. The Legislature further finds and declares that the United States Army Corps of Engineers, the Environmental Protection Agency, the State Water Resources Control Board and relevant California regional water quality control boards, and the San Francisco Bay Conservation and Development Commission have agreed to participate in a joint effort known as the Long Term Management Strategy (LTMS) to formulate a federal/state management strategy for bay dredging that concentrates federal efforts toward studying and possibly designating ocean disposal sites, and state efforts towards inbay and upland disposal options. This chapter is intended to reflect the commission's role in the Long Term Management Strategy, including all of the following:

(a) Evaluation of the use of upland, diked bayland, and delta areas for reuse of material dredged from the bay, regulatory constraints and opportunities involving upland disposal, and potential project sponsors and methods to implement those uses.

(b) Participation with the United States Geological Survey to make a detailed study of bay sediment processes affecting the need for bay dredging and the physical impacts of inbay disposal to augment the modeling work on bay sediment dynamics being performed by the State Water Resources Control Board and the United States Army Corps of Engineers.

(c) Participation in the studies of the economic and environmental impacts of the array of disposal options, and assistance in the identification of feasible and environmentally acceptable disposal sites for material dredged from the bay in the ocean, bay, upland, and delta areas, with particular attention given to identifying sites suitable for the reuse of dredged materials.

(d) Participation in the development of a joint agency comprehensive dredging management plan to implement the Long Term Management Strategy, which shall include all of the following:

(1) Prioritization of dredging needs, taking into account technical requirements, geographic factors, costs, and economic investments affecting, and environmental impacts resulting from, maritime, recreational boating, and other dredging projects, and the monitoring and evaluation of regulatory compliance, the environmental effects of dredging and disposal, and the effectiveness of designated disposal sites.

(2) Guidelines for dredging and disposal.

(3) The establishment and implementation of an office of dredged material management, that includes at a minimum the agencies identified in Section 66663.2, and which will simplify and expedite the processing of permit applications for the dredging and disposal of

dredged material using the Long Term Management Strategy goals and policies.

(4) The development of alternatives to open water disposal of dredged sediments.

SEC. 4. Section 66667 of the Government Code is amended to read:

66667. (a) Until January 1, 1996, the commission may impose a user fee not to exceed ten cents ($0.10) per cubic yard of material upon any public agency or person who proposes to dredge material from, or dispose of dredged material in, the area described in subdivisions (a) and (e) of Section 66610. As needed, the commission shall, after a public hearing, set the fee at an amount which it finds necessary to meet its cost for participating in the Long Term Management Strategy. Prior to setting the fee, the commission shall consult with affected public agencies or persons proposing to dredge in the area described in subdivisions (a) and (e) of Section 66610 in an attempt to obtain funding for these costs from alternative sources, including, but not limited to, the General Fund, federal agencies, and voluntary industry funding. To the extent alternative funding is accepted by the commission to carry out the purposes of this chapter, the commission shall reduce on a commensurate basis, or shall not impose, the user fee authorized by this subdivision. Funds annually appropriated to the commission for Long Term Management Strategy related expenses, equal to the level of funding for that purpose appropriated to the commission in the 1991–92 Budget, shall not be considered alternative funding. In no event shall the sum of all of the fees collected by the commission pursuant to this subdivision and the funding obtained from alternative sources exceed the sum of six hundred fifty thousand dollars ($650,000). Funds from fees and alternative sources shall be deposited in the Long Term Management Strategy Study Fund, which is hereby created in the State Treasury. All moneys in the Long Term Management Strategy Study Fund shall be available to the commission, upon appropriation by the Legislature, only for costs associated with its participation in the Long Term Management Strategy. The commission shall include a detailed accounting of funds imposed, collected, and expended in the annual report required by Section 66661.

(b) On and after January 1, 1996, the commission shall impose a user fee of seven cents ($0.07) per cubic yard of material upon any public agency or person who proposes to dispose of dredged material in the areas described in subdivisions (a) and (e) of Section 66610. No such fee shall be imposed for dredged material disposed in areas outside of the commission's jurisdiction, or for beneficial use projects such as the Sonoma Baylands Project. In no event shall the sum of all of the fees collected by the commission pursuant to this subdivision exceed the sum of two hundred ten thousand dollars ($210,000). Funds from fees collected pursuant to this subdivision shall be deposited in the Long Term Management Strategy Completion

Fund, which is hereby created in the State Treasury. If the total of fees paid exceeds two hundred ten thousand dollars ($210,000), fees shall be refunded in reverse chronological order of receipt until the total received equals two hundred ten thousand dollars ($210,000). The money in the Long Term Management Strategy Completion Fund shall be available to the commission, upon appropriation by the Legislature, only for costs associated with implementing Section 66663.2. The commission shall include a detailed accounting of fees imposed, collected, and expended in the annual report required by Section 66661.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 952

An act to amend Section 40232 of, and to amend, repeal, and add Section 41705 of, the Health and Safety Code, and to amend Sections 42650, 43202, 43205, 43207, 43209, 43211, 43212, 43214, 43215, 43507, 44001, 44004, 44008, 44009, 44012, 44014, 44015, 44016, 44017, and 44018 of, to amend and repeal Section 43209.1 of, to amend, repeal, and add Section 44002 of, to add Sections 43212.1, 43215.1, 43222, and 43310.1 to, to add Part 6 (commencing with Section 45030) to, to repeal Sections 44013 and 44105 of, to repeal and add Section 44005 of, and to repeal and add Chapter 4 (commencing with Section 44300) of Part 4 of, and Part 5 (commencing with Section 45000) of, Division 30 of, the Public Resources Code, relating to waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. It is the intent of the Legislature in enacting this act that all provisions of the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code), including those provisions related to enforcement, shall be applicable to all facilities that are within the jurisdiction of an enforcement agency.

SEC. 2. Section 40232 of the Health and Safety Code is amended to read:

40232. Except as provided in Section 41705, the bay district board shall establish standards for the emission of identifiable odor-causing substances. Exceptions or variances may be granted from such standards in a manner provided by the bay district board. No person

shall discharge from any source any contaminant which violates such standards.

SEC. 2.1. Section 41705 of the Health and Safety Code is amended to read:

41705. (a) Section 41700 shall not apply to odors emanating from either of the following:

(1) Agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(2) Operations that produce, manufacture, or handle compost, as defined in Section 40116 of the Public Resources Code, provided that the odors emanate directly from the compost facility or operations.

(b) If a district receives a complaint pertaining to an odor emanating from a compost operation exempt from Section 41700 pursuant to paragraph (2) of subdivision (a), that is subject to the jurisdiction of an enforcement agency under Division 30 (commencing with Section 40000) of the Public Resources Code, the district shall, as soon as is feasible, refer the complaint to the enforcement agency.

(c) This section shall become inoperative on the date that is two years from the effective date of this section, as amended by Assembly Bill 59 of the 1995–96 Regular Session, and, as of January 1, 1998, is repealed, unless a later enacted statute, that becomes operative on or before that date, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 2.2. Section 41705 is added to the Health and Safety Code, to read:

41705. (a) Section 41700 shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(b) This section shall become operative on the date that is two years from the effective date of this section.

SEC. 2.3. Section 42650 of the Public Resources Code is amended to read:

42650. (a) The board may establish a research and development program, based on priorities that are consistent with Section 40051, and designed to identify, develop, and refine processes and technologies that will assist state and local governments and private industries to implement innovative resource management and waste reduction programs. The board may conduct research and development programs, upon appropriation therefor by the Legislature, that include, but are not limited to, all of the following:

(1) Establishing, in coordination with the Department of Conservation, a recycling extension service within the board to serve as a central clearinghouse for recycling research information.

(2) Establishing cooperative research and development facilities at universities and colleges in the state.

(3) Developing a research program to study the feasibility of using disposal site mining technology to extend the life of existing disposal

sites, recover valuable resources, and to reuse the reclaimed disposal site in an environmentally sound manner.

(4) Establishing a research program to identify educational and promotional methods that can effect environmentally positive changes in human behavior.

(5) Conducting studies into hazards posed by special wastes and by ash and air emissions from the incineration of waste.

(6) Conducting research to develop statistical tools to establish computer-based data bases on waste characteristics, special waste volumes, and county and regional waste capacities.

(7) Analyzing disposal site encroachment problems and assisting local agencies in the development of effective public policy tools to discourage disposal site encroachment.

(b) The board shall submit the results of the research and development programs specified in subdivision (a) in the report required pursuant to Section 40507.

SEC. 3. Section 43202 of the Public Resources Code is amended to read:

43202. An enforcement agency may be designated by the local governing body and certified by the board to act to carry out this chapter within each jurisdiction. If an enforcement agency is not designated and certified, the board, in addition to its other powers and duties, shall be the enforcement agency within the jurisdiction, subject to the agreement required pursuant to Section 43212.1 or 43310.1.

SEC. 4. Section 43205 of the Public Resources Code is amended to read:

43205. (a) Except as provided in subdivision (b), if no enforcement agency is designated and certified, the board shall be the enforcement agency and shall assume all the powers and duties of an enforcement agency pursuant to this chapter, subject to the agreement required pursuant to Section 43212.1 or 43310.1. If the board is the enforcement agency and an enforcement agency is then designated and certified by the board, the board shall continue to act as the enforcement agency for the remainder of the fiscal year, with those responsibilities terminating as of June 30, unless otherwise specified by the board.

(b) Notwithstanding subdivision (a), if no enforcement agency is designated and certified for Stanislaus County or Santa Cruz County, the board shall be the enforcement agency, and shall assume all of the powers and duties of an enforcement agency for that county, but shall not be required to enter into the agreement required pursuant to Sections 43212.1 or 43310.1.

(c) The board and the enforcement agency shall not, at any time, impose duplicative fees or charges on the owner or operator of a solid waste facility.

SEC. 5. Section 43207 of the Public Resources Code is amended to read:

43207. No local governmental department or agency, or any employee thereof, which is the operating unit for a solid waste handling or disposal operation shall be the enforcement agency, or an employee thereof, for the types of solid waste handling or disposal operation it conducts unless authorized by the board to act in that capacity.

SEC. 6. Section 43209 of the Public Resources Code is amended to read:

43209. The enforcement agency, within its jurisdiction and consistent with its certification by the board, shall do all of the following:

(a) Enforce applicable provisions of this part, regulations adopted under this part, and terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(b) Request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

(c) File with the board, upon its request, information the board determines to be necessary.

(d) Develop, implement, and maintain inspection, enforcement, permitting, and training programs.

(e) Establish and maintain an enforcement program consistent with regulations adopted by the board to implement this chapter, the standards adopted pursuant to this chapter, and the terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001). The enforcement agency may establish specific local standards for solid waste handling and disposal subject to approval by a majority vote of its local governing body, by resolution or ordinance. Any such standard shall be consistent with this division and all regulations adopted by the board.

(f) Keep and maintain records of its inspection, enforcement, permitting, training, and regulatory programs, and of any other official action in accordance with regulations adopted by the board.

(g) Consult, as appropriate, with the appropriate local health agency concerning all actions which involve health standards. The consultation shall include affording the health agency adequate notice and opportunity to conduct and report the evaluation as it reasonably determines is appropriate.

(h) Establish and maintain an inspection program. The inspection program shall be designed to determine whether any solid waste facility is operating without a permit, or in violation of state minimum standards, or in violation of the terms and conditions of its solid waste facilities permit, or may pose a significant threat to public health and safety or to the environment, based on any relevant information. The inspection program shall also ensure frequent inspections of solid waste facilities that have an established pattern of noncompliance with this division, regulations adopted pursuant to this division, or the terms and conditions of a solid waste facilities permit.

SEC. 6.5. Section 43211 of the Public Resources Code is amended to read:

43211. (a) For those facilities which accept both hazardous wastes and other solid wastes, the State Department of Health Services shall exercise enforcement and regulatory powers relating to the control of the hazardous wastes at the facility pursuant to Chapter 6.5 (commencing with Section 25000) of Division 20 of the Health and Safety Code. The board and the enforcement agency shall, at solid waste disposal facilities, exercise enforcement and regulatory powers relating to the control of solid wastes and asbestos containing waste, as provided in Section 44820.

(b) For purposes of this section, "asbestos containing waste" means waste that contains more than 1 percent by weight, of asbestos which is either friable or nonfriable.

SEC. 7. Section 43209.1 is added to the Public Resources Code, to read:

43209.1. (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the Health and Safety Code, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part. The enforcement agency shall, within 10 days from the date of receipt of the complaint, notify the district of any enforcement actions that have been taken or will be taken to control the emanation of the odor.

(b) This section shall become inoperative on the date that is two years from the effective date of this section and, as of January 1, 1998, is repealed, unless a later enacted statute, that becomes operative on or before that date, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7.5. Section 43212 of the Public Resources Code is amended to read:

43212. (a) If the board is the enforcement agency, the board may impose fees to recover its costs of operation on the local governing body, a solid waste facility operator, or a solid waste enterprise that operates within the jurisdiction of the enforcement agency, and shall collect those fees in a manner determined by the board and developed in consultation with the local governing body. Any fees imposed pursuant to this section shall bear a direct relationship to the reasonable and necessary costs, as determined by the board, of providing for the efficient operation of the activities or programs for which the fee is imposed.

(b) If the board is the enforcement agency for a county and all of the cities within that county, the local governing body shall be the county board of supervisors for purposes of this section.

SEC. 8. Section 43212.1 is added to the Public Resources Code, to read:

43212.1. If the board is the enforcement agency, the local governing body and the board shall enter into an agreement which shall identify the jurisdictional boundaries of the enforcement agency; address the powers and duties to be performed by the board as the enforcement agency, and identify an estimated workload and anticipated costs to the board.

SEC. 9. Section 43214 of the Public Resources Code is amended to read:

43214. (a) The board shall develop performance standards for evaluating certified local enforcement agencies and shall periodically review each certified enforcement agency and its implementation of the permit, inspection, and enforcement program. The board's review shall include periodic inspections of solid waste facilities within the jurisdiction of each enforcement agency for the purpose of evaluating whether the enforcement agency is appropriately applying and enforcing state minimum standards at solid wastesites within its jurisdiction.

(b) Following initial certification of an enforcement agency by the board, the board shall conduct a performance review of the enforcement agency every three years, or more frequently as determined by the board.

(c) In conducting performance reviews of enforcement agencies, the board shall, based on the performance standards developed pursuant to subdivision (a), determine whether each enforcement agency is in compliance with the requirements of this article and the regulations adopted to implement this article. If the board finds that an enforcement agency is not fulfilling its responsibilities pursuant to this article and if the board also finds that this lack of compliance has contributed to significant noncompliance with state minimum standards at solid waste facilities within the jurisdiction of the enforcement agency, the board shall withdraw its approval of designation pursuant to Sections 43215 and 43216. Notwithstanding Sections 43215 and 43216, if the board finds that conditions at solid waste facilities within the jurisdiction of the enforcement agency threaten public health and safety or the environment, the board shall, within 10 days of notifying the enforcement agency, become the enforcement agency until another enforcement agency is designated locally and certified by the board.

(d) The board shall find that an enforcement agency is not fulfilling its responsibilities pursuant to this article, and may take action as prescribed by subdivision (c), if the board, in conducting its performance review, makes one or more of the following findings with regard to compliance with this part and Part 5 (commencing with Section 45000):

(1) The enforcement agency has failed to exercise due diligence in the inspection of solid waste facilities and disposal sites.

(2) The enforcement agency has intentionally misrepresented the results of inspections.

(3) The enforcement agency has failed to prepare, or cause to be prepared, permits, permit revisions, or closure and postclosure maintenance plans.

(4) The enforcement agency has approved permits, permit revisions, or closure and postclosure maintenance plans which are not consistent with this part and Part 5 (commencing with Section 45000).

(5) The enforcement agency has failed to take appropriate enforcement actions.

(6) The enforcement agency has failed to comply with, or has taken actions that are inconsistent with, or that are not authorized by, this division or the regulations adopted by the board pursuant to this division. However, nothing in this paragraph is intended to affect the authority of enforcement agencies pursuant to subdivision (e) of Section 43209.

SEC. 10. Section 43215 of the Public Resources Code is amended to read:

43215. (a) If the board, in conducting the inspection and performance review required pursuant to Section 43214 or this section, finds that the enforcement agency is not fulfilling one or more of its responsibilities, the board shall notify the enforcement agency of the particular reasons for finding that the enforcement agency is not fulfilling its responsibilities and of the board's intention to withdraw its approval of the designation if, within a time to be specified in that notification, but in no event less than 30 days, the enforcement agency does not take the corrective action specified by the board.

(b) The board shall adopt regulations that establish a process for notice, public hearing, the admission of evidence, and final action by the board for partial or full withdrawal of the approval of designation pursuant to this chapter.

SEC. 11. Section 43215.1 is added to the Public Resources Code, to read:

43215.1. The board may, upon the written request of an enforcement agency, provide legal counsel for purposes of compliance with this part.

SEC. 12. Section 43222 is added to the Public Resources Code, to read:

43222. Any fees or charges imposed pursuant to this part by any enforcement agency shall bear a direct relationship to the reasonable and necessary cost, as determined by the enforcement agency, of providing the efficient operation of the activities or programs for which the fee is assessed.

SEC. 13. Section 43310.1 is added to the Public Resources Code, to read:

43310.1. (a) If the board becomes the enforcement agency, on or after January 1, 1995, the local governing body and the board shall enter into an agreement which shall identify the jurisdictional boundaries of the enforcement agency; address the powers and duties to be performed by the board as the enforcement agency, and identify an estimated workload and anticipated costs to the board. The agreement shall also identify the cost recovery procedures to be followed by the board pursuant to Section 43310.

(b) If, after a good faith effort by the board and the local governing body, no agreement is reached between the local governing body and the board within the 90-day period specified in Section 43216, or within 90 days after a local governing body notifies the board of its intent not to designate an enforcement agency pursuant to Section 43203, the board shall make the determinations specified in subdivision (a) that would have been the subject of the agreement.

(c) If the board becomes the enforcement agency for Stanislaus County or Santa Cruz County, the board shall impose fees authorized pursuant to this section directly on the solid waste facilities in those counties, and shall not require the local governing body to impose or collect those fees.

SEC. 14. Section 43507 of the Public Resources Code is amended to read:

43507. The owner and operator shall, regardless of any changes occurring during the continued operation of the landfill, close and maintain the landfill during postclosure in accordance with the most recent closure plan and the most recent postclosure maintenance plan approved by the board pursuant to this article. Upon receipt of the final shipment of solid waste, the most recent closure and postclosure maintenance plan shall become the governing document for the disposal site.

SEC. 15. Section 44001 of the Public Resources Code is amended to read:

44001. Any person who proposes to become an operator of a solid waste facility shall file with the enforcement agency having jurisdiction over the facility, or the board if there is no designated and certified enforcement agency, an application for a solid waste facilities permit at least 150 days in advance of the date on which it is desired to commence operation, unless the enforcement agency issues a permit to the applicant to commence operations prior to that time.

SEC. 16. Section 44002 of the Public Resources Code is amended to read:

44002. (a) The operation of a solid waste facility by any person, except as authorized pursuant to a solid waste facilities permit issued by the enforcement agency, is prohibited.

(b) This section shall become inoperative on the date that is one year from the effective date of this section, as amended by Assembly Bill 59 of the 1995–96 Regular Session, and, as of January 1, 1997, is

repealed, unless a later enacted statute, that becomes operative on or before that date, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 44002 is added to the Public Resources Code, to read:

44002. (a) No person shall operate a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to this division. If the enforcement agency determines that a person is so operating a solid waste facility, the enforcement agency shall immediately issue a cease and desist order pursuant to Section 45005 ordering the facility to immediately cease operations, and directing the owner or operator of the facility to obtain a solid waste facilities permit in order to resume operation of the facility.

(b) This section shall become operative on the date that is one year from the effective date of this section.

SEC. 18. Section 44004 of the Public Resources Code is amended to read:

44004. (a) No operator of a solid waste facility shall make any significant change in the design or operation of the solid waste facility not authorized by the existing permit, unless the change is approved by the enforcement agency, and conforms with this division and all regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit are revised to reflect the change.

(b) If the operator wishes to change the design or operation of the solid waste facility in a manner that is not authorized by the existing permit, the operator shall file an application for revision of the existing solid waste facilities permit with the enforcement agency. The application shall be filed at least 150 days in advance of the date when the proposed modification is to take place unless the 150-day time period is waived by the enforcement agency.

(c) The enforcement agency shall review the application to determine all of the following:

(1) Whether the change conforms with this division and all regulations adopted pursuant to this division.

(2) Whether the change requires review pursuant to Division 13 (commencing with Section 21000).

(d) Within 30 days from the date of the receipt of the application for a revised permit, the enforcement agency shall inform the operator, and if the enforcement agency is a local enforcement agency, also inform the board, of its determination to do any of the following:

(1) Allow the change without a revision to the permit.

(2) Disallow the change because it does not conform with the requirements of this division or the regulations adopted pursuant to this division.

(3) Require a revision of the solid waste facilities permit to allow the change.

(4) Require review under Division 13 (commencing with Section 21000) before a decision is made.

(e) The operator has 30 days within which to appeal the decision of the enforcement agency to the hearing panel, as authorized pursuant to Article 2 (commencing with Section 44500) of Chapter 4.

(f) Under circumstances which present an immediate danger to the public health and safety or to the environment, as determined by the enforcement agency, the 120-day filing period may be waived.

(g) (1) A permit revision is not required for the temporary suspension of activities at a solid waste facility if the suspension meets either of the following criteria:

(A) The suspension is for the maintenance or minor modifications to a solid waste unit or to solid waste management equipment.

(B) The suspension is for temporarily ceasing the receipt of solid waste at a solid waste management facility and the owner or operator is in compliance with all other applicable terms and conditions of the solid waste facilities permit and minimum standards adopted by the board.

(2) Any owner or operator of a solid waste facility who temporarily suspends operations shall remain subject to the closure and postclosure maintenance requirements of this division and to any other requirement imposed by federal law pertaining to the operation of a solid waste facility.

(3) The enforcement agency may impose any reasonable conditions relating to the maintenance of the solid waste facility, environmental monitoring, and periodic reporting during the period of temporary suspension. The board may also impose any reasonable conditions determined to be necessary to ensure compliance with applicable state standards.

SEC. 19. Section 44005 of the Public Resources Code is repealed.

SEC. 20. Section 44005 is added to the Public Resources Code, to read:

44005. (a) Any owner or operator of a solid waste facility who plans to encumber, sell, transfer, or convey the ownership or operations of a solid waste facility or disposal site to a new owner or operator, shall notify the enforcement agency and the board, 45 days prior to the date of the anticipated transfer. The notification shall be in writing and shall include information as determined by the board, including any financial assurances, if applicable.

(b) The enforcement agency and the board shall review the notification documentation and any available records of enforcement actions taken against the proposed transferee, and shall determine, within 30 days of receipt, whether the facility will be operated in compliance with the terms and conditions of an approved permit and any other applicable requirements, including,

but not limited to, the requirements of Division 13 (commencing with Section 21000). If the solid waste facility will not be operated in compliance with the terms and conditions of an approved permit, or any other applicable requirements of Division 13 (commencing with Section 21000), the new owner or operator shall be required to file an application for a revised or modified solid waste facilities permit.

(c) If the enforcement agency or the board determines that the facility will be operated in compliance with the terms and conditions of the existing permit, the enforcement agency may change the name of the owner or operator on the permit.

SEC. 21. Section 44008 of the Public Resources Code is amended to read:

44008. (a) A decision to issue or not issue the permit shall be made by the enforcement agency within 120 days from the date that the application is deemed complete pursuant to Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, unless waived by the applicant.

(b) The enforcement agency may only issue the permit pursuant to subdivision (a) if it finds that the proposed solid waste facilities permit is consistent with this division and any regulations adopted by the board pursuant to this division applicable to solid waste facilities.

SEC. 22. Section 44009 of the Public Resources Code is amended to read:

44009. (a) (1) The board shall, in writing, concur or object to the issuance, modification, or revision of any solid waste facilities permit within 60 days of the board's receipt of any proposed solid waste facilities permit submitted under Section 44007 after consideration of the issues in this section.

(2) If the board determines that the permit is not consistent with the state minimum standards adopted pursuant to Section 43020, or is not consistent with Sections 43040, 43600, 44007, 44010, 44017, 44150, and 44152 or Division 31 (commencing with Section 50000), it shall object to provisions of the permit, and shall submit those objections to the local enforcement agency for its consideration.

(3) Until a countywide integrated waste management plan has been approved by the board pursuant to this division, if the board determines, based on substantial evidence in the record, that issuance of the permit would prevent or substantially impair achievement of the diversion requirements prescribed in Section 41780, the board shall object to the permit and shall submit its determination and specific objections to the local enforcement agency, the applicant, and the city or county within which the facility is located for their consideration.

(4) If the board fails to concur or object in writing within 60 days, it shall be deemed to have concurred in the issuance of the permit as submitted to it.

(b) Notwithstanding subdivision (a), the board is not required to concur in, or object to, and shall not be deemed to have concurred

in, the issuance of a solid waste facilities permit for a disposal facility if the owner or operator is not in compliance with, as determined by the regional water board, an enforcement order issued pursuant to Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code, or if all of the following conditions exist:

(1) Waste discharge requirements for the disposal facility issued by the applicable regional water board are pending review in a petition before the state water board.

(2) The petition for review of the waste discharge requirements includes a request for a stay of the waste discharge requirements.

(3) The state water board has not taken action on the stay request portion of the pending petition for review of waste discharge requirements.

(c) In objecting to the issuance, modification, or revision of any solid waste facilities permit pursuant to this section, the board shall, based upon substantial evidence in the record on the matter before the board, state its reasons for objecting. The board shall not object to the issuance, modification, or revision of any solid waste facilities permit unless it finds that the permit is not consistent with state minimum standards adopted pursuant to Section 43020, or is not consistent with Section 43040, 43600, 44007, 44010, 44017, 44150, or 44152, or Division 31 (commencing with Section 50000).

SEC. 23. Section 44012 of the Public Resources Code is amended to read:

44012. When issuing or revising any solid waste facilities permit, the enforcement agency shall ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and that the long-term protection of the environment is the guiding criterion, and that any terms and conditions of the solid waste facilities permit are consistent with subdivision (e) of Section 43209 and this division.

SEC. 24. Section 44013 of the Public Resources Code is repealed.

SEC. 25. Section 44014 of the Public Resources Code is amended to read:

44014. (a) Upon compliance with Sections 44007, 44008, and 44009, and after any necessary hearing, the local enforcement agency shall issue, modify, or revise a solid waste facilities permit if the board has concurred in that issuance, modification, or revision of the permit pursuant to Section 44009.

(b) The permit shall contain all terms and conditions which the enforcement agency determines to be appropriate for the operation of the solid waste facility. The operator shall comply with all terms and conditions of the permit.

(c) Within 15 days of issuing, modifying, or revising a solid waste facilities permit, the enforcement agency shall transmit to the permittee a copy of the solid waste facilities permit.

SEC. 26. Section 44015 of the Public Resources Code is amended to read:

44015. (a) Any solid waste facilities permit issued or revised under this chapter shall be reviewed and, if necessary, revised at least once every five years.

(b) On or before January 1, 1996, the board shall prepare a list of solid waste facilities whose permits have not been reviewed by the enforcement agency in the last five years, indicating the designated enforcement agency having jurisdiction over the solid waste facility. The list shall include, but is not limited to, a solid waste facility that meets any of the following conditions:

(1) The solid waste facilities permit was issued on or before January 1, 1989.

(2) The facility is accepting more solid waste than is authorized in the current solid waste facilities permit.

(3) Any relevant information submitted to the board indicates significant risks to the public health or safety or to the environment.

(c) The enforcement agency shall order any solid waste facility on the list to seek a revision or modification of its solid waste facilities permit if the solid waste facility is not in compliance with this division.

SEC. 27. Section 44016 of the Public Resources Code is amended to read:

44016. (a) The enforcement agency may, in accordance with Chapter 4 (commencing with Section 44300), suspend or revoke the permit of any solid waste facility designed to convert solid waste from offsite sources into energy or synthetic fuels if the facility utilizes recyclable materials for conversion to energy and if the local agency in whose jurisdiction the materials are collected requires, by ordinance, contract, or otherwise, that recyclable materials within the jurisdiction of that local agency be converted into energy at that facility. This subdivision does not otherwise restrict the ability of a solid waste facility to purchase, collect, transport, or process recyclable materials.

(b) As used in this section, "local agency" means any county, city, or district authorized to collect, dispose, or collect and dispose of solid waste, or any joint powers authority formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code which is authorized to construct and operate a facility for the conversion of solid waste into energy, synthetic fuel, or reusable materials.

(c) As used in this section, "recyclable materials" means discarded paper, glass, cardboard, plastic, ferrous metal, or aluminum which has been segregated from other solid waste materials for the purpose of reuse or recycling, except that recyclable materials do not include materials which a local agency, having jurisdiction over the locations where these materials exist, determines could be potentially harmful to the public health, or materials which create a public nuisance, as defined in Section 3480 of the Civil Code.

SEC. 28. Section 44017 of the Public Resources Code is amended to read:

44017. The enforcement agency shall include, in the permit of any solid waste facility designed to convert solid waste into energy or synthetic fuels, a provision which requires the use of operating procedures at the facility to prevent hazardous waste from entering the conversion process.

SEC. 29. Section 44018 of the Public Resources Code is amended to read:

44018. The board shall establish, by regulation, a program to be implemented by the board and by local enforcement agencies that provides for the expedited review of permits issued pursuant to this article. The program shall be designed to reduce unnecessary delay in the issuance of these permits and to protect the public health and safety and the environment.

SEC. 30. Section 44105 of the Public Resources Code is repealed.

SEC. 31. Chapter 4 (commencing with Section 44300) of Part 4 of Division 30 of the Public Resources Code is repealed.

SEC. 32. Chapter 4 (commencing with Section 44300) is added to Part 4 of Division 30 of the Public Resources Code, to read:

CHAPTER 4. DENIAL, SUSPENSION, OR REVOCATION OF PERMITS

Article 1. Denial of Permits

44300. An enforcement agency may, after holding a public hearing in accordance with the procedures set forth in Section 44310, deny a solid waste facilities permit in any of the following cases:

(a) The application is incomplete or otherwise inadequate.

(b) The applicant has not complied with Division 13 (commencing with Section 21000).

(c) The applicant has failed to demonstrate that the facility will meet minimum regulatory standards.

(d) The application contains significant false or misleading information or significant misrepresentations.

(e) The agency determines the applicant has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of this division, or regulations adopted pursuant to this division, or the terms and conditions of the permit, and the violation meets both of the following criteria:

(1) The violation demonstrates a chronic recurring pattern of noncompliance which has posed, or may pose, a significant risk to public health and safety or to the environment.

(2) The violation has not been corrected or reasonable progress toward correction has not been achieved.

Article 2. Suspension or Revocation

44305. (a) An enforcement agency may, after holding a public hearing in accordance with the procedures set forth in Section 44310,

temporarily suspend a solid waste facilities permit if the enforcement agency determines that changed conditions at the facility necessitate a permit revision or modification to eliminate a significant threat to public health and safety or to the environment.

(b) Notwithstanding subdivision (a), the enforcement agency may suspend a solid waste facilities permit prior to holding a hearing if the enforcement agency determines that changed conditions at the facility necessitate a permit revision or modification to prevent or mitigate an imminent and substantial threat to the public health and safety or to the environment. However, any person aggrieved by an action by an enforcement agency to suspend a permit pursuant to this subdivision may appeal the action to a hearing panel established pursuant to Section 44308 or 44309. The hearing panel shall, at the request of the aggrieved party, hear the appeal within three business days of the date when the permit was suspended, or the first day thereafter requested by the aggrieved party in compliance with Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code. The hearing panel shall render its decision on the day the hearing concludes. The panel may affirm, modify, or rescind the permit suspension. Any decision of a hearing panel established pursuant to Section 44308 may be appealed pursuant to Section 45030.

(c) The enforcement agency shall lift the permit suspension as soon as the changed conditions that necessitated the suspension pursuant to subdivision (b) have been corrected.

44306. The enforcement agency may, after holding a hearing in accordance with the procedures set forth in Section 44310, revoke a solid waste facilities permit if the enforcement agency determines any of the following:

(a) The permit was obtained by a material misrepresentation or failure to disclose relevant factual information.

(b) The operator has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of this division, regulations adopted pursuant to this division, or the terms and conditions of the permit, and the violation meets both of the following criteria:

(1) The violation demonstrates a chronic recurring pattern of noncompliance which has posed, or may pose, a significant risk to public health and safety or to the environment.

(2) The violation has not been corrected or reasonable progress toward correction has not been achieved.

44307. From the date of issuance of a permit that imposes conditions that are inappropriate, as contended by the applicant, or after the taking of any enforcement action pursuant to Part 5 (commencing with Section 45000) by the enforcement agency, the enforcement agency shall hold a hearing, if requested to do so, by the person subject to the action, in accordance with the requirements set forth in Section 44310. The enforcement agency shall also hold a

hearing upon a petition to the enforcement agency requesting the enforcement agency to review an alleged failure of the agency to act as required by law or regulation.

44308. (a) All hearings conducted pursuant to this chapter by the enforcement agency shall be conducted by a hearing panel appointed pursuant to either of the following procedures:

(1) The governing body may appoint three of its members as the hearing panel.

(2) The chairperson of the governing body may appoint an independent hearing panel consisting of three members.

(b) (1) If an independent hearing panel is appointed pursuant to paragraph (2) of subdivision (a), not more than one member of the governing body shall serve on the hearing panel.

(2) Members of the independent hearing panel shall be selected for their legal, administrative, or technical abilities in areas relating to solid waste management.

(3) At least one member of the independent hearing panel shall be a technical expert with knowledge of solid waste management methods and technology.

(4) At least one member of the independent hearing panel shall be a representative of the public at large.

(5) A member of an independent hearing panel shall serve for a term of two years, and may not serve more than two consecutive terms.

(6) If a member of an independent hearing panel does not complete the member's term, the chairperson of the governing body shall appoint a replacement to serve out the remainder of the unexpired term.

(c) Members of the hearing panel may receive per diem and necessary expenses while conducting the hearing.

44309. All hearings conducted by the board pursuant to this chapter, acting as, or on behalf of, the enforcement agency, shall be conducted by a hearing panel of three board members selected by the chairperson of the board.

44310. All hearings conducted pursuant to this chapter shall be based on the following procedures:

(a) (1) The hearing shall be initiated by the filing of a request for a hearing by the person subject to the action within 15 days from the date that person is notified, in writing, of the enforcement agency's intent to act in the manner specified.

(2) The enforcement agency shall, within 15 days from the date of receipt of a request for a hearing, provide written notice to the person filing the request notifying the person of the date, time, and place of the hearing, and requiring the person to provide the enforcement agency with a statement of the issues that require a hearing, at least 20 days prior to the date of the hearing.

(3) If that person fails to request a hearing or to timely file a statement of issues, the enforcement agency may take the proposed

action without a hearing or may, at its discretion, proceed with a hearing before taking the proposed action.

(b) The hearing shall be held on the merits of the issues presented, in accordance with the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code.

(c) Within 30 days from the date of the hearing, the hearing panel shall issue its decision. The decision shall become effective as provided in Section 45017.

SEC. 33. Part 5 (commencing with Section 45000) of Division 30 of the Public Resources Code is repealed.

SEC. 34. Part 5 (commencing with Section 45000) is added to Division 30 of the Public Resources Code, to read:

PART 5. ENFORCEMENT

CHAPTER 1. ADMINISTRATIVE ENFORCEMENT

Article 1. Corrective Action Orders

45000. (a) Except as provided in subdivision (b), the enforcement agency may issue an administrative order requiring the owner or operator of a solid waste facility to take corrective action as necessary to abate a nuisance, or to protect human health and safety or the environment.

(b) An administrative order shall not be issued for any minor violation which is corrected immediately in the presence of the inspector. Immediate compliance in that manner shall be noted in the inspection report.

(c) The enforcement agency or the board may contract for corrective action after an order issued pursuant to subdivision (a) becomes final and the owner or operator fails to comply with the order by the date specified in the order.

(d) If a enforcement agency or the board expends any funds pursuant to subdivision (b), the owner or operator of the solid waste facility shall reimburse the enforcement agency or the board for the amount expended, including, but not limited to, a reasonable amount for contract administration, and an amount equal to the interest that would have been earned on the expended funds. The amount expended shall be recoverable in a civil action by the Attorney General, upon request of the local enforcement agency or the board.

(e) Any contract for corrective action entered into by the board is exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

(f) Any corrective action shall incorporate by reference any applicable waste discharge requirements issued by the state water board or a regional water board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of, and Article 3 (commencing with Section 13240) of Chapter

4 of Division 7 of, the Water Code, and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, existing at the time of the corrective action or proposed corrective action.

45001. Nothing in this division affects the authority of the state water board or a regional water board to issue enforcement orders or take corrective actions with regard to solid waste facilities.

Article 2. Cease and Desist Orders

45005. Any person who is operating, or proposes to operate, a solid waste facility, or who is disposing of solid waste in an unauthorized manner, or who owns a solid waste facility and causes or permits the operator to operate the facility (1) in violation of a solid waste facilities permit or in violation of this division, or any regulation adopted pursuant to this division, or (2) without a solid waste facilities permit, or (3) in a manner that causes or threatens to cause a condition of hazard, pollution, or nuisance shall, upon order of the enforcement agency, cease and desist any improper action.

Article 3. Civil Penalties

45010. The Legislature hereby finds and declares as follows:

(a) It is the intent of the Legislature that administrative civil penalties should be imposed on the operators of solid waste facilities in a judicious manner and should only be imposed after all feasible efforts have been made by enforcement agencies to provide proper notice of violations to alleged violators as well as a reasonable opportunity to bring solid waste facilities into compliance with this division.

(b) Any funds collected through the imposition of civil penalties pursuant to this article shall not be deposited in the General Fund of the local enforcement agency, but instead, shall be deposited in a segregated account and used exclusively for the purpose of bringing a solid waste facility into compliance with this division or to remediate an abandoned solid waste disposal sites.

(c) Any civil penalties paid to the board pursuant to this article shall be deposited in the Solid Waste Disposal Site Cleanup Trust Fund created pursuant to Section 48027.

45011. (a) (1) Except as provided in paragraph (2), if an enforcement agency determines that a solid waste facility is in violation of this division, any regulations adopted pursuant to this division applicable to a solid waste facility, or any corrective action or cease and desist order, or poses a potential or actual threat to public health and safety or the environment, the enforcement agency may issue an order establishing a time schedule according to which the facility shall be brought into compliance with this division. The order may also provide for a civil penalty, to be imposed administratively

by the enforcement agency, in an amount not to exceed five thousand dollars ($5,000) for each day on which a violation occurs, and not to exceed a total amount of fifteen thousand dollars ($15,000) in any one calendar year if compliance is not achieved in accordance with that time schedule.

(2) (A) Notwithstanding paragraph (1), an enforcement agency shall not impose a civil penalty pursuant to this section for the first three minor violations of the same requirement or standard established under this division, or any regulations adopted pursuant to this division applicable to a solid waste facility, identified at a solid waste facility.

(B) For purposes of this paragraph, a " minor violation" is a violation that does not pose any threat to the public health, safety, or to the environment, and which does not pertain to the actual design or operation of a solid waste facility but only to a strictly procedural aspect of the solid waste facilities permit.

(b) Prior to issuing an order that imposes a civil penalty pursuant to subdivision (a), an enforcement agency shall do both of the following:

(1) Notify the operator of the solid waste facility that the facility is in violation of this division.

(2) Upon the request of the operator of the solid waste facility, meet with the operator of the solid waste facility to clarify regulatory requirements and to determine what actions, if any, that the operator may voluntarily take to bring the facility into compliance by the earliest feasible date.

(c) Prior to imposing any administrative civil penalty against an operator of a solid waste facility, the enforcement agency shall do all of the following:

(1) Notify the governing body of its intent to impose a penalty. Upon receipt of the notification, the governing body may direct the hearing panel to hold a duly noticed public hearing to provide an opportunity for the alleged violation or violations and the amount of any proposed civil penalty to be reviewed by the hearing panel pursuant to Section 44308.

(2) Consider the factors described in subdivision (a) of Section 45016.

(3) Consider alternatives to the imposition of an administrative civil penalty that would bring the solid waste facility into compliance and would achieve the same result without imposing the penalty.

45012. (a) The board shall not take any enforcement action specified in this part without providing notice to the local enforcement agency and the violator of the board's intent to take that action, allowing the local enforcement agency and the violator a reasonable opportunity to correct the violation, and conducting a public hearing on the matter. In taking any such enforcement action, the board is vested, in addition to its other powers, with all of the powers of a local enforcement agency under this division.

(b) Notwithstanding subdivision (a), if the board finds that a local enforcement agency's failure to take enforcement action constitutes an imminent threat to public health or safety or to the environment, the board may take the enforcement action, as the board determines is necessary.

45013. The board shall, upon the request of the local enforcement agency, provide guidance to the enforcement agency regarding the inspection and investigation of illegal, abandoned, or inactive closed sites, to ensure that public health and safety and the environment are protected.

45014. (a) Upon the failure of any person to comply with any final order issued by a local enforcement agency or the board, the Attorney General, upon request of the board, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the person or persons from continuing to violate the order or complaint.

(b) Any attorney authorized to act on behalf of the local enforcement agency or the board may petition the superior court for injunctive relief to enforce this part, any term or condition in any solid waste facilities permit, or any standard adopted by the board or the local enforcement agency.

(c) In addition to the administrative imposition of civil penalties pursuant to this part, any attorney authorized to act on behalf of the local enforcement agency or the board may petition the superior court to impose, assess, and recover civil penalties authorized by this part. Any civil penalties recovered pursuant to this part shall be paid, to the maximum extent allowed by law, to the board or to the local enforcement agency, whichever is represented by the attorney who brought the action.

45015. Remedies under this part are in addition to, and do not supersede or limit, any other applicable remedies provided by law.

45016. In making a determination regarding the allegations in, and the amount of any liability that may be imposed pursuant to, an order, petition, or complaint and determining the appropriate outcome, and when determining whether to deny, suspend, or revoke a permit or to deny a permit application, the issuing agency, the board, or a court, as the case may be, shall take into consideration:

(a) The nature, circumstances, extent, and gravity of any violation or any condition giving rise to the violation and the various remedies and penalties that are appropriate in the given circumstances, with primary emphasis on protecting the public health and safety and the environment.

(b) Whether the violations or conditions giving rise to the violation have been corrected in a timely fashion or reasonable progress is being made.

(c) Whether the violations or conditions giving rise to the violation demonstrate a chronic pattern of noncompliance with this division, the regulations adopted pursuant to this division, or with the

terms and conditions of a solid waste facilities permit, or pose, or have posed, a serious risk to the public health and safety or to the environment.

(d) Whether the violations or conditions giving rise to the violation were intentional.

(e) Whether the violations or conditions giving rise to the violation were voluntarily and promptly reported to appropriate authorities prior to the commencement of an investigation by the enforcement agency.

(f) Whether the violations or conditions giving rise to the violation were due to circumstances beyond the reasonable control of the violator or were otherwise unavoidable under the circumstances.

(g) Whether in the case of violations of this division, or the regulations adopted pursuant to this division, the violator has established one or more of the following programs prior to committing the violation that will help to prevent violations of the type committed in the future:

(1) A comprehensive compliance program designed to prevent violations of this division, the regulations adopted pursuant to this division, and of the terms and conditions of the solid waste facilities permit.

(2) Employee training programs designed to educate the employees regarding their responsibilities under this division, the regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit.

(3) Regular internal audits to monitor the effectiveness of the comprehensive compliance programs described in paragraph (1).

(4) Confidential systems for employee reporting of potential statutory, regulatory, or solid waste facilities permit violations and for protecting persons so reporting from retaliatory employment actions.

(5) Special incentive programs that promote and reward statutory, regulatory, and permit compliance.

45017. (a) (1) Except as provided in paragraphs (2) and (3) all orders and determinations issued pursuant to this part or Part 4 (commencing with Section 43000) shall take effect immediately after any time period provided for appeal has expired, and a request for a hearing shall stay the effect of that provision of the order pending completion of all appeals.

(2) Notwithstanding any other provision of law, any provision of an order issued under this part shall take effect upon service on the affected person if the enforcement agency finds that the actions or inactions associated with that provision may pose an imminent and substantial threat to the public health and safety or to the environment, and a request for a hearing shall not stay the effect of that provision of the order pending completion of all appeals.

(3) Notwithstanding any other provision of law, if the enforcement agency determines that any or all provisions of the

order are so related that the public health and safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole shall take effect upon issuance by the enforcement agency and a request for a hearing shall not stay the effect of the order as a whole pending completion of all appeals.

(b) Any person aggrieved by an order by an enforcement agency which takes effect upon service, based on the finding of an imminent and substantial threat to public health and safety or to the environment, may immediately appeal the order to a hearing panel established pursuant to Section 44307. The hearing panel shall, at the request of the person subject to the order, hear the appeal consistent with the provisions of Sections 11125.5 and 54956.5 of the Government Code, as applicable.

45018. The payment of civil liability assessed in any order issued under this chapter shall be made within 30 days of the date the order becomes final. Any penalties recovered shall be sent to the board or to the enforcement agency, whichever brought the action, as provided in subdivision (c) of Section 45014.

45019. At least 10 days prior to the date of issuance of an enforcement order which is not for an emergency, or within five days from the date of issuance of an enforcement order for an emergency, or within 15 days from the date of discovery of a violation of a state law, regulation, or term or condition of a solid waste facilities permit for a solid waste facility, which is likely to result in an enforcement action, the following agencies shall, to the extent that the enforcement action involves a violation that may also be under the jurisdiction of another state regulatory agency, provide a written statement providing an explanation of, and justification for, the enforcement order or a description of the violation in the following manner:

(a) The local enforcement agency shall, as appropriate, provide the statement to the regional water board, the board, the air pollution control district or air quality management district, and the Department of Toxic Substances Control.

(b) A regional water board shall, as appropriate, provide the statement to the local enforcement agency, the board, the air pollution control district or air quality management district, and the Department of Toxic Substances Control.

(c) An air pollution control district or an air quality management district shall, as appropriate, provide the statement to the local enforcement agency, the board, the regional water board, and the Department of Toxic Substances Control.

(d) The Department of Toxic Substances Control shall, as appropriate, provide the report of inspection required by paragraph (1) of subdivision (c) of Section 25185 of the Health and Safety Code to the local enforcement agency, the board, the regional water board,

and the air pollution control district or air quality management district.

45020. (a) Within 30 days from the date of receipt of a notice of the issuance of, or the proposal to issue, an enforcement order pursuant to Section 45022, the regional water board, the enforcement agency, or the air pollution control district or the air quality management district, and the Department of Toxic Substances Control shall, as appropriate, inspect the solid waste facility to determine whether any state law, regulation, or term or condition of a permit, which that board or agency is authorized to enforce, is being violated.

(b) Each agency shall, to the maximum extent allowed by law, do all of the following with respect to enforcement activities at solid waste facilities:

(1) Coordinate enforcement activities to eliminate duplication and facilitate compliance.

(2) Notify the facility operator of any violation before imposing an administrative civil penalty.

(3) Prior to imposing any administrative penalty, and upon the request of the operator of the solid waste facility, meet with the operator to clarify the regulatory requirements and to determine what actions, if any, the operator could voluntarily take to bring the facility into compliance by the earliest feasible date. If a contemporaneous enforcement action or investigation dealing with the same violation or with similar violations is being pursued by another regulatory agency, a city attorney, a district attorney, or the Attorney General, the operator may request a meeting with all those investigating and enforcement entities.

(4) Consider the factors prescribed in Section 45016 in determining appropriate enforcement actions.

45021. If any board or agency specified in Section 45019 receives a complaint concerning a solid waste facility and the board or agency determines that it is not authorized to take action concerning the complaint, the board or agency shall refer the complaint within 30 days from the date of receipt to another state agency which it determines is authorized to take action.

45022. If any agency or board specified in Section 45019 receives a complaint concerning a solid waste facility which the agency or board does not refer to another state agency pursuant to Section 45021, or if the agency or board receives such a complaint referred to it by another agency or board pursuant to Section 45021, the agency or board shall either take appropriate enforcement action concerning the facility pursuant to this part, or refer the complaint to the Attorney General, the district attorney, or city attorney, whichever is applicable, or, at the earliest feasible date, not to exceed 60 days, provide the person who filed the complaint with a written statement explaining why an enforcement action would not be appropriate.

45023. Any person who (a) owns or operates a solid waste facility and who intentionally or negligently violates or causes or permits another to violate the terms and conditions of a solid waste facilities permit, (b) operates a solid waste facility without a solid waste facilities permit, or (c) intentionally or negligently violates any standard adopted by the board, is subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each day the violation or operation occurs.

45024. Any attorney authorized to act on behalf of the board or a local enforcement agency may petition the superior court to impose, assess, and recover the civil penalties authorized by Section 45023. Any penalties recovered pursuant to this section shall be paid, to the maximum extent allowed by law, to the board or to the local enforcement agency, whichever is represented by the attorney bringing the action.

SEC. 35. Part 6 (commencing with Section 45030) is added to Division 30 of the Public Resources Code, to read:

PART 6. APPEALS

CHAPTER 1. ENFORCEMENT AGENCY ACTION

45030. (a) Any aggrieved person may appeal to the board to review the written decision of the hearing panel or to review the petitioner's request in the instance of a failure of a hearing panel to render a decision or consider the request for review, or a determination by the governing body not to direct the hearing panel to hold a public hearing, under the following circumstances:

(1) Within 30 days from the date of issuance of a written decision by a hearing panel.

(2) Within 30 days from the failure of a hearing panel to render a decision or consider a petitioner's request.

(3) Within 30 days from the date that the governing body determines not to direct the hearing panel to hold a public hearing.

(b) With regard to the review of an administrative civil penalty imposed by an enforcement agency or a hearing panel, the board shall not reduce the amount of the civil penalty, but may rescind the order imposing the civil penalty if the board determines, based on substantial evidence in the record, that the violation did not occur.

45031. Within 30 days from the date that an appeal is filed with the board, the board may do any of the following:

(a) Determine not to hear the appeal if the appellant fails to raise substantial issues.

(b) Determine not to hear the appeal if the appellant failed to participate in the administrative hearing before the hearing panel, except that the board shall hear the appeal if the appellant shows good cause for the appellant's failure to appear.

(c) Determine to accept the appeal and to decide the matter on the basis of the record before the hearing panel, or based on written arguments submitted by the parties, or both.

(d) Determine to accept the appeal and hold a hearing, within 60 days, unless all parties stipulate to extending the hearing date.

45032. (a) If the board declines to hear the appeal, it shall notify all parties in writing by appropriate means, and any enforcement agency action stayed pending appeal shall become effective 10 days from the date that the board's notification is made, unless judicial review is sought pursuant to Chapter 2 (commencing with Section 45040).

(b) If the board accepts the appeal, the evidence before the board shall consist of the record before the hearing panel, or any actions or inactions not subject to review by a hearing panel, the record before the local enforcement agency, and any other relevant evidence which, in the judgment of the board, should be considered to effectuate and implement the policies of this division.

(c) The board may only overturn an enforcement action by a local enforcement agency if it finds, based on substantial evidence, that the action was inconsistent with this division. If the board overturns the decision of the local enforcement agency or the hearing panel, or finds that the enforcement agency has failed to act as required, the board may do both of the following:

(1) Direct that the appropriate action be taken by the local enforcement agency.

(2) If the local enforcement agency fails to act by the date specified by the board, take the appropriate action itself.

45033. A failure to appeal to the hearing panel or the board for review, or the refusal of the local enforcement agency, a hearing panel, or the board to hear an appeal does not preclude a person from filing an action with the superior court to contest any action or inaction of the local enforcement agency or the board.

CHAPTER 2. JUDICIAL REVIEW

45040. Within 30 days from the date of service of a copy of a decision and order issued by a local enforcement agency or the board, except as provided in subdivision (a) of Section 45032, under Chapter 1 (commencing with Section 45000), any aggrieved party may file with the superior court a petition for a writ of mandate for review thereof.

45041. The evidence before the court shall consist of the records before the hearing panel and the board, if any, including the enforcement agency's records, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement the policies of this division.

45042. Except as otherwise provided in this chapter, Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this article.

SEC. 36. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the California Integrated Waste Management Act of 1989 more efficiently and to achieve the goals of the act in a timely manner, it is necessary that this measure take effect immediately as an urgency statute.

CHAPTER 953

An act to amend Section 3 of Chapter 1 of the Statutes of the 1993–94 First Extraordinary Session, relating to economic development, and making an appropriation therefor.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 3 of Chapter 1 of the Statutes of the 1993–94 First Extraordinary Session is amended to read:

Sec. 3. (a) The sum of one million five hundred thousand dollars ($1,500,000) is hereby appropriated, as specified in subdivision (b), to the Trade and Commerce Agency for allocation to the Inland Valley Development Agency to provide funds to rehabilitate the existing heating, ventilation, and air conditioning systems and to install insulation in specified facilities used by the Inland Valley Development Agency in support, directly or indirectly, of the federal Department of Defense Finance and Accounting Service Center at Norton Air Force Base. The funds shall be used exclusively for the rehabilitation or installation within those buildings, facilities, or other structures that are either (1) intended to support any educational program established for the employees of the Department of Defense Finance and Accounting Service Center, (2) utilized for the child day care requirements of the employees of the service center,

or (3) used and applied for the rehabilitation and installation as mandated herein for buildings, facilities, or other structures necessary to accommodate the relocation of governmental or private tenants on the former Norton Air Force Base.

(b) Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the appropriation made by subdivision (a) shall be from the money in the Federal Trust Fund created by Section 16360 of the Government Code, received by the state from federal oil overcharge funds in the Petroleum Violation Escrow Account, as defined by Section 155 of the Further Continuing Appropriations Act of 1983 (Public Law 97-377) or other federal law, and from federal oil overcharge funds available pursuant to court judgments or federal agency orders, and is appropriated for the purpose of this section. The money appropriated by this section shall be disbursed by the Controller, subject to approval by the Director of Finance as to which court judgment or federal agency order is the proper source of those funds.

(c) If for any reason the Defense Finance and Accounting Service Center does not locate at the Norton Air Force Base facility, the money appropriated by this section shall revert to the funding sources specified in subdivision (b).

(d) The appropriation made by this section shall become inoperative if the federal Department of Defense Finance and Accounting Service Center is not located upon the premises known as Norton Air Force Base in San Bernardino County and shall also become inoperative on February 1, 1995, if that facility has not been awarded to that site before that date.

CHAPTER 954

An act to amend Section 199.2 of the Code of Civil Procedure, and to amend Sections 73117, 73348, 73353, 73358, 73665.5, 74020, 74021, 74922, 74925, and 74926.5 of, to amend and renumber Section 70142.13 of, to add Sections 26608.5, 68114.8, and 74020.5 to, to add Articles 29.6 (commencing with Section 74720) and 30.1 (commencing with Section 74760) to Chapter 10 of Title 8 of, and to repeal and add Article 11.6 (commencing with Section 73750) and Article 12.3 (commencing with Section 73784) of Chapter 10 of Title 8 of, the Government Code, relating to courts.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 199.2 of the Code of Civil Procedure is amended to read:

199.2. In Placer County prospective jurors residing in the Tahoe Division of the Placer County Municipal Court, except as otherwise provided in this section, shall only be included in trial court venires for sessions of the superior court held within that division. However, each prospective juror residing in the county shall be given the opportunity to elect to serve on juries with respect to trials held anywhere in the county in accordance with the rules of the superior court, which shall afford to each eligible resident of the county an opportunity for selection as a trial jury venireman. Additionally, nothing in this section shall preclude the superior or municipal court, in its discretion, from ordering a countywide venire in the interest of justice.

SEC. 1.1. Section 26608.5 is added to the Government Code, to read:

26608.5. (a) In Glenn County, the board of supervisors by ordinance or resolution may transfer from the sheriff to the marshal of the Glenn County Municipal Court the duty to serve all writs, notices, and other process issued by any state court, or other competent authority.

(b) After adoption of the ordinance or resolution pursuant to subdivision (a), and notwithstanding any other provision of law, in Glenn County the marshal shall have the duty to serve all writs, notices, and other process issued by any state court or other competent authority, and the sheriff shall be relieved of any obligation imposed by Section 26608 and any liability imposed by Section 26663 or 26664.

(c) Nothing in this section shall be construed as limiting the responsibility or authority of a private person or registered process server from serving process and notices in the manner prescribed by law, nor shall it limit the authority of the sheriff or any other peace officer to serve warrants of arrest or other process specifically directed by a court to the sheriff or any other peace officer.

SEC. 1.2. Section 68114.8 is added to the Government Code, to read:

68114.8. Notwithstanding Section 69906, in the Superior Court of San Bernardino County, the official court reporters shall be compensated at Step E of the range set forth in the San Bernardino County code for court reporters, unless determined otherwise by a majority of the judges of the superior court. Effective pay period one of each year, official court reporters will be credited with 160 hours of vacation leave time for the reporters' immediate use. Official court reporters who are hired after the beginning of pay period one shall be credited with vacation leave hours on a pro rata basis. Official court reporters who terminate after the beginning of pay period one shall reimburse the county for vacation time used in excess of the pro rata amount earned while employed during the year. Amounts reimbursable may be deducted from court reporter compensation which is payable after notice is given by the court reporter of

termination. Official court reporters in regular positions budgeted less than 80 hours per pay period or in job-share positions shall receive vacation accumulation on a pro rata basis.

SEC. 1.3. Section 70142.13 of the Government Code, as added by Chapter 716 of the Statutes of 1991, is amended to read:

70142.13. (a) In lieu of appointing a juvenile court referee pursuant to Section 247 of the Welfare and Institutions Code, the judges of the superior court in Tulare County, by majority vote, may appoint a court commissioner. The superior court may provide that the commissioner, in addition to the powers and duties specified in Section 259 of the Code of Civil Procedure, shall perform the duties of a probate commissioner appointed pursuant to Section 69897 and, if appointed by the presiding judge of the juvenile court, shall perform the duties of a juvenile court referee as specified in Section 247 of the Welfare and Institutions Code.

(b) Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years, shall hold office at the pleasure of the superior court, and shall not engage in the private practice of law.

(c) The salary of the commissioner for all duties performed pursuant to this section shall be up to 85 percent of the annual salary of a judge of a superior court. The commissioner shall be a member of the Tulare County Retirement System and shall receive vacation, sick leave, and fringe benefits as determined by the board of supervisors.

(d) Notwithstanding subdivision (c) of Section 77202, the court commissioner position shall be counted in determining the number of subordinate judicial positions in the county and shall be considered as part of the court operations for the county for purposes of Sections 77003 and 77204.

SEC. 1.4. Section 70142.13 of the Government Code, as added by Chapter 720 of the Statutes of 1991, is amended and renumbered to read:

70142.16. (a) In the County of Placer, the court commissioner appointed pursuant to Section 70141 shall hold office at the pleasure of a majority of the judges. Subject to subdivision (c), the superior court may provide that the commissioner, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties of a probate commissioner appointed pursuant to Section 69897 of the Government Code. The superior court may also authorize the commissioner to perform the duties of a juvenile court referee appointed pursuant to Section 247 of the Welfare and Institutions Code, and other duties as specified by the superior court.

(b) The superior court shall not appoint a commissioner pursuant to Section 70141 unless there is a prior finding by the board of supervisors that there are sufficient funds for this purpose.

(c) Any commissioner authorized to perform additional duties pursuant to this section shall have been admitted to practice law in

California for not less than five years, but in no case shall a commissioner engage in the practice of law during his or her period of service as a commissioner.

(d) Any commissioner authorized to perform additional duties pursuant to this section shall receive compensation pursuant to a salary recommended by the superior court and approved annually by the board of supervisors. The presiding judge of the superior court shall specify the days, hours, and court locations for the commissioner.

(e) The commissioner appointed pursuant to Section 70141 shall not be counted in the calculation of trial court funding pursuant to Sections 77200 and 77202, and the salary for this position shall not be considered as a part of court operations for Placer County for purposes of Sections 77203 and 77204.

SEC. 1.5. Section 73117 of the Government Code is amended to read:

73117. Official reporters in the Municipal Court of the San Bernardino County Municipal Court District appointed pursuant to Section 72194 shall be attachés of that court and in lieu of any other compensation provided by law for services in reporting testimony and proceedings in that court shall receive salary and vacation leave time in the same amount as is received by the official reporters of the Superior Court of the County of San Bernardino, which shall be charged against the general fund of the county. Official reporters of the courts of the San Bernardino County Municipal Court District, other than official reporters pro tempore, shall be entitled to the same sick leave benefits as classified employees of the County of San Bernardino, and shall be subject to the same regulations governing the accrual and use of such benefits as apply to county employees, to the extent that Section 5 of Article VI of the California Constitution is not violated.

SEC. 1.6. Section 73348 of the Government Code is amended to read:

73348. (a) In Contra Costa County, the annual salary of each regular official reporter shall be based on a four-step salary plan with one-year increments. Effective January 1, 1995, the four salary steps are as follows:

Step 1. Forty-seven thousand one hundred dollars ($47,100).

Step 2. Forty-nine thousand four hundred fifty-two dollars ($49,452).

Step 3. Fifty-one thousand nine hundred twenty-four dollars ($51,924).

Step 4. Fifty-four thousand five hundred sixteen dollars ($54,516).

The step of entry to the above schedule shall be Step 1. However, the judges of the court may appoint a court reporter to a duly allocated exempt position at a higher step if, in the opinion of the appointing judge, an individual to be appointed has the experience

and qualifications to entitle that individual to the higher initial step, and if the higher initial salary has the approval of the presiding judge of the court and the board of supervisors, but in no case may the initial salary be above the third step of the salary range. Except as provided below, official reporters shall advance to the next higher step on the salary plan annually. The compensation of each official reporter pro tempore shall be an amount which is equivalent to 1.05 times the daily wage of the fourth step in the salary range for full-time official reporters in Contra Costa County for each day the reporter actually is on duty under order of the court which per diem rate shall apply when an official reporter is appointed pursuant to Section 869 of the Penal Code.

Irrespective of the step of the salary range to which initially appointed, an official court reporter shall be eligible for advancement to the next higher step in the salary range after six months' service, and thereafter shall advance on the salary range based on annual reviews.

(b) During the hours which the court is open for the transaction of judicial business, the regular official reporter shall perform the duties required by law. When not engaged in the performance of any other duty imposed upon him or her by law, he or she shall render stenographic or clerical assistance to the judge of the court to which he or she is assigned as the judge may direct.

(c) The board of supervisors shall adjust the salary of regular official reporters as part of its regular review of county employee compensation. The adjustment shall be to that salary level closest to the average percentage adjustment in basic salaries of the county classes of superior court clerk, legal clerk, secretary, and clerk (experienced level). The reporter salary adjustment shall be effective on the same day as the effective date of the board's action as to all of the aforesaid county classifications, but for official reporters of each municipal court district shall be effective only until January 1 of the second year following the calendar year in which the adjustment is made. The compensation of each official reporter pro tempore shall remain at the rate specified in subdivision (a) for the days he or she actually is on duty until changed by the board of supervisors at the same time and on the same basis as regular official reporters.

SEC. 1.8. Section 73353 of the Government Code is amended to read:

73353. Effective January 1, 1995, classes of positions provided in Section 73351 are allocated to the salary schedule as follows:

Class Title	Salary Schedule	Pay Level
Deputy Clerk-Beginning Level	C5-1270	1618-1966
Deputy Clerk-Experienced Level	C5-1414	1868-2270

Deputy Clerk-Senior Level	XB-1572	2085-2663
Deputy Clerk-Specialist Level	XC-1686	2334-2982
Deputy Clerk-DEO I	C5-1337	1730-2102
Deputy Clerk-DEO II	C5-1434	1906-2316
Deputy Clerk-Courtroom Clerk	C5-1836	2848-3462
Court Operations Coordinator II	C5-2103	3719-4521
Court Operations Coordinator I	C5-2006	3375-4103
District Court Manager III	C1-2432	6281F
District Court Manager II	C5-2322	4629-5627
District Court Manager I	C5-2194	4073-4951
Court Probation Officer	C5-1947	3182-3868
Municipal Court Collection Agent	C5-1682	2442-2968
Municipal Court Computer Systems Technician	C5-1752	2619-3183
Municipal Court Accounting Specialist	XB-1766	2549-3256
Municipal Court Division Supervisor	C5-1861	2920-3549
Municipal Court Program Assistant	C5-1867	2938-3571
Municipal Court Operations and Training Manager	C5-2053	3538-4300
Municipal Court Management Analyst	C5-2127	3809-4630
Municipal Court Systems and Facilities Manager	C5-2196	4081-4961
Municipal Court Fiscal and Administrative Manager	C5-2219	4176-5076
County Municipal Court Administrator	C1-2593	7377 F

SEC. 1.9. Section 73358 of the Government Code is amended to read:

73358. The total number of positions authorized for operation of municipal courts in Contra Costa County is as follows:

Class Title	Number of Positions
Deputy clerk–(deep class), including beginning, experienced, senior, and specialist levels	230
Deputy clerk–DEO I or II	26
Deputy clerk–courtroom clerk	18
Court operations coordinator II	2
Court operations coordinator I	2
District court manager III	1
District court manager II	2
District court manager I	1
Court probation officer	4
Municipal court division supervisor	15

Municipal court computer systems technician	1
Municipal court accounting specialist	1
Municipal court collection agent	2
Municipal court program assistant	1
Municipal court operations and training manager	1
Municipal court management analyst	1
Municipal court systems and facilities manager	1
Municipal court fiscal and administrative manager	1
County municipal court administrator	1

SEC. 2. Section 73665.5 of the Government Code is amended to read:

73665.5. (a) There shall be one marshal for each division of the district. Upon the effective date of this chapter:

(1) The elected constable of the North Humboldt Judicial District shall continue in office as the marshal of the North Humboldt Division until the expiration of his or her current elected term of office. Until the expiration of his or her current term, the marshal shall receive the same salary and benefits to which he or she was entitled as constable.

(2) The elected marshal of the Eureka Judicial District shall continue in office as the marshal of the Eureka Division until the expiration of his or her current elected term of office. Until the expiration of his or her current term, the marshal shall receive the same salary and benefits to which he or she was entitled as marshal.

(3) The elected constable on the Eel River Judicial District shall continue in office as the marshal of the Eel River Division until the expiration of his or her current elected term in office. Until the expiration of his or her current term, the marshal shall receive the same salary and benefits to which he or she was entitled as constable.

(4) The marshal may appoint in his or her division, with the approval of the presiding judge and the concurrence of the board of supervisors, the following officers:

(A) In the North Humboldt Division, one deputy marshal and one legal office assistant I/II.

(B) In the Eureka Division, one chief deputy marshal, three deputy marshals I/II, one senior legal office assistant, and one legal office assistant I/II.

(C) In the Eel River Division, one deputy marshal and one legal office assistant I/II.

This paragraph is not intended, and shall not be construed, to limit the county from changing the number or types of positions set forth herein.

(b) Notwithstanding any other provision of law, in the event of a vacancy in the position of marshal in any division, whether prior to or subsequent to the expiration of the then current term, an appointment to fill that vacancy shall be made by the presiding judge

of that division with the concurrence of the board of supervisors. Each appointed marshal shall serve at the pleasure of the presiding judge and may be removed from office in accordance with any appropriate county personnel resolutions.

SEC. 3. Article 11.6 (commencing with Section 73750) of Chapter 10 of Title 8 of the Government Code, as enacted by Chapter 762 of the Statutes of 1980, is repealed.

SEC. 4. Article 11.6 (commencing with Section 73750) of Chapter 10 of Title 8 of the Government Code, as enacted by Chapter 1327 of the Statutes of 1990, is repealed.

SEC. 5. Article 11.6 (commencing with Section 73750) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 11.6. Madera County

73750. There is in the County of Madera, on and after the effective date of this section, a single municipal court district known as the Madera County Municipal Court District.

73751. The Madera County Municipal Court District shall consist of the following divisions, embracing the territory that is within the following judicial districts in the County of Madera on the effective date of this section, as those districts may later be modified by the board of supervisors or by operation of law:

(a) Madera Division, that territory within the Madera Judicial District.

(b) Borden Division, that territory within the Borden Judicial District.

(c) Chowchilla Division, that territory within the Chowchilla Judicial District.

(d) Sierra Division, that territory within the Sierra Judicial District.

73752. (a) There shall be one judge for each division. Upon the effective date of this article the judges of the former Madera, Borden, Chowchilla, and Sierra Judicial Districts automatically shall become the judges of the Madera, Borden, Chowchilla, and Sierra Divisions, respectively, of the Madera County Municipal Court District.

(b) The time for election and qualification of the successor to any judge who becomes a judge of the district pursuant to this article shall be that previously fixed by law for election and qualification of the successors for the courts and offices superseded, had those courts not been superseded.

(c) The judge of each division shall be elected by the electors resident within that division, and not from the district at large. However, any otherwise qualified candidate is eligible to be elected to any division if he or she resides within the district as a whole.

73753. The board may by ordinance modify or enlarge the divisions created by this chapter. This section shall not be construed to limit or be limited by existing provisions of law conferring

authority upon the board to revise district boundaries or to consolidate districts.

73754. As used in this article:

(a) Except as otherwise provided, for purposes of qualification and election of judges, "division" as used in this chapter means the "District" referred to in subdivision (b) of Section 16 of Article VI of the California Constitution.

(b) "Board" means the Board of Supervisors of the County of Madera.

(c) "County" means the County of Madera.

(d) "District" means the Madera County Municipal Court District.

73755. The judges of the district shall, by majority vote, elect one of their members to serve as presiding judge and shall formulate rules and regulations consistent with those of the Judicial Council for transfer of cases, assignment of judges, scheduling of vacation of judges, and other administrative matters to promote uniformity of procedures, efficiency, and economy in the business of the district.

73756. (a) Facilities for the district shall be maintained at the court facilities provided within each division. The presiding judge shall determine the nature and frequency of sessions held at the court facilities within each division.

(b) Trial jurors for each session of the courts of the district shall be selected from persons residing within the divisions in which those sessions are held.

73757. There shall be one marshal for each division within the district. Any person serving as an elected constable in any of the justice court districts previously in existence at the time of the creation of the district shall, until the expiration of his or her elected term in office, be entitled to carry out the duties of the office of marshal of the division encompassing the former justice court district in which he or she was serving, under the same terms and conditions of employment and compensation as were previously provided prior to the creation of the district. Notwithstanding any other provision of law, in the event of a vacancy in the position of marshal, the board shall make an appointment. Each marshal, with the approval of the board, may appoint any necessary deputy marshals and clerks. The board shall designate the positions, job titles, and salary ranges for these positions by resolution.

75758. Each marshal shall be responsible for the transportation of prisoners held in the county's adult correctional facility to and from necessary court appearances, medical trips, and transfers to or from local, state, or federal correctional facilities. To meet this responsibility, each marshal shall contract with the county department of corrections, pursuant to Section 831.6 of the Penal Code, to provide these transportation services by qualified personnel of the county department of corrections.

73759. (a) All clerical employees of the superseded justice courts on the effective date of this chapter shall become clerical employees of the municipal court district, with no loss of salary, benefits, or civil service status, as follows:

(1) Borden Division:

(A) One municipal court supervisor II who shall receive the salary specified in range 14.

(B) Two municipal court clerks III who shall receive the salary specified in range 11.

(C) Two and one-half municipal court clerks II who shall receive the salary specified in range 9.5.

(2) Chowchilla Division:

(A) One municipal court supervisor I who shall receive the salary specified in range 13.

(B) Two municipal court clerks III who shall receive the salary specified in range 11.

(C) One municipal court clerk II who shall receive the salary specified in range 9.5.

(3) Madera Division:

(A) One municipal court supervisor II who shall receive the salary specified in range 14.

(B) Two municipal court clerks III who shall receive the salary specified in range 11.

(C) Six and one-quarter municipal court clerks II who shall receive the salary specified in range 9.5.

(D) One office assistant I who shall receive the salary specified in range 4.5.

(E) One interpreter/clerk (Spanish) who shall receive the salary specified in range 14.

(4) Sierra Division:

(A) One municipal court supervisor I who shall receive the salary specified in range 14.

(B) Two municipal court clerks III who shall receive the salary specified in range 11.

(C) Two municipal court clerks II who shall receive the salary specified in range 9.5.

(b) Notwithstanding the provisions of this article and Article 4 (commencing with Section 72150), whenever the business of the court or other emergency requires a greater number of employees or reclassification of employees in order to effectively carry out the duties and functions of the court, a majority of judges of the district may, with the approval of the board, establish new positions or reclassify existing positions for officers, attachés, and employees in addition to those provided by this article. The order and approval establishing these positions shall designate the position, title, and salary range for each position.

(c) At the request of the judges of the district, the county personnel department shall assist in the recruitment and

examination of court personnel. Personnel hired or appointed as official reporters, official interpreters, staff attorneys, administrators, or other nonclerical positions on or after the effective date of this article shall serve at the pleasure of the majority of the judges of the district. Other provisions of the county civil service or personnel rules or procedures shall not be applicable to those court employees unless made applicable by local court rule. For all court personnel, benefits other than salary shall be the same as are now or may be later provided to equivalent county classifications, as that equivalency is determined by agreement of the majority of the judges of the district and the board, but shall not exceed those provided for equivalent county classifications. To the extent necessary to implement the intent of this subdivision, court employees shall be deemed county employees for inclusion in those benefit programs provided to county employees as a group or groups. All court employees, except pro tempore court reporters, shall be included in the county's retirement system if otherwise eligible under statutory and retirement system membership requirements.

(d) Any adjustment of the number, classification, or compensation of employees pursuant to this section shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

73760. (a) Whenever a reference is made to a numbered salary range in any section of this article, the schedule of monthly salaries found in the salary resolution for the county in effect on the effective date of this article shall apply.

(b) In the event the board amends the county salary resolution or adopts a new resolution to provide for a change in compensation for the ranges or steps, those changes shall be effective for the municipal court employees under this article on the effective date of the act of the board or the effective date of this section, whichever is earlier, and shall remain effective only until January 1 of the second year following the year in which the change is made, unless ratified by the Legislature.

73761. The officers, employees, and attachés of the municipal court district shall be entitled to the same vacation, sick leave, and similar benefits and privileges as those granted to other county employees under the ordinances and resolutions of the board.

73762. Official reporters shall be appointed by and serve at the pleasure of the majority of the judges of the municipal court district pursuant to Section 72194. The salary of each official reporter shall be at the rates provided by Section 70045.12, which shall be charged against the general fund of the county.

73763. All matters affecting the employment, appointment, promotion, demotion, termination, transfer, layoff, or discipline of municipal court officers, employees, or attachés that are not specifically determined by this article shall be governed and

regulated by the then-current ordinances and resolutions of the county civil service commission and the board.

73764. Except as otherwise provided by resolution of the board, all officers, employees, and attachés of the municipal court district shall devote their full time to the performance of their duties.

73765. Notwithstanding the provisions of this article and Article 4 (commencing with Section 72150) of Chapter 8, the officers, employees, and attachés of the municipal court district may be paid increased compensation, not to exceed 25 percent of the amounts specified in this article, in order to equalize their compensation with that paid to county employees with commensurate duties and responsibilities. These increases may be made upon the recommendation of a majority of the judges of the municipal court district with the approval of the board and may be made operative at the same time as the higher compensation becomes operative for similar county positions. Any pay increase authorized by this section shall only be effective until January 1 of the second calendar year after the calendar year in which the change occurs, unless ratified by the Legislature.

73766. Except as otherwise provided by resolution of the board or by this article, all fees collected by court officers and attachés, including the marshals and any deputy marshals, shall be deposited in the county treasury. Notwithstanding any other provision of law, the marshals and any deputy marshals shall be entitled to retain all fees paid to them for their services for the period between January 1, 1996, and January 5, 1997.

73767. For purposes of this article, the terms "officers," "employees," and "attachés" of the municipal court district include the officers and employees of the marshal's office created herein.

SEC. 6. Article 12.3 (commencing with Section 73784) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 7. Article 12.3 (commencing with Section 73784) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 12.3. Mendocino County

73784. This article applies to and establishes the Mendocino County Municipal Court District, which shall embrace the entire County of Mendocino, and shall supersede the Anderson, Arena, Long Valley, Round Valley, and Ten Mile Judicial Districts and the Mount San Hedrin Municipal Court District.

73784.1. There is in the County of Mendocino one municipal court judicial district, known as the Mendocino County Municipal Court District which shall have five judges.

73784.2. The Mendocino County Municipal Court District shall consist of two divisions as follows:

The Coastal Division encompassing the territory of the former Ten Mile, Arena, and Anderson Municipal Court Districts; and the Inland

Division encompassing the territory of the former Mount San Hedrin, Round Valley, and Long Valley Municipal Court Districts.

73784.3. The Coastal Division shall have two judges. The Inland Division shall have three judges.

73784.4. The current judge of each judicial district superseded by this section shall automatically become a judge of the newly formed judicial division encompassing the district in existence upon the effective date of this section.

73784.5. The time for election and qualifications of the successor to any judge who becomes a judge of a division pursuant to this section shall be that previously fixed by law for the election and qualification of the successors for the court and office superseded, had those courts not been superseded. When the current terms of the former Arena and Anderson Districts expire in the year 2000, only one judge shall be elected, and when the current terms of the former Mount San Hedrin District expire in 1998, only one judge shall be elected. The judge of each division shall be elected by the electors resident within that judicial division.

For the purposes of the qualification and election of judges, the "division" referred to in this article is and shall continue to be the "district" referred to in subdivision (b) of Section 16 of Article VI of the California Constitution.

73784.6. Each judge who was a judge of the part-time municipal court before the effective date of this section shall be available for the balance of time necessary to comprise a full-time workload.

73784.7. The sheriff shall provide bailiff and security services to the municipal court as requested by the municipal court.

73784.8. Except as provided in Section 73784.9, there shall be one marshal, who shall serve at the pleasure of the judges of the Mendocino County Municipal Court District. Upon the effective date of this section, the marshal of the superseded Mount San Hedrin Municipal Court District shall become the Marshal of the Mendocino County Municipal Court. The marshal shall be responsible for service of civil and criminal process, and for municipal court bailiff and security services as requested by judges.

73784.9. The elected constables of the former Anderson and Round Valley Judicial Districts shall continue in office as assistant marshals until the expiration of their then-current terms, at which time they may serve as assistant marshals under the direction and pleasure of the Marshal of the Mendocino County Municipal Court. Each office of constable shall be abolished upon expiration of the term in effect on the effective date of this section, or any vacancy, whichever shall first occur, and the Marshal of the Mendocino County Municipal Court shall then succeed to the duties of the offices so abolished.

73784.10. The location of permanent court facilities and locations where sessions of the court may be held other than in the county seat shall be as determined by the board of supervisors.

73784.11. Trial jurors for each session of the courts of the district shall be selected from persons residing within the divisions within which those sessions are held. Upon adoption of a rule pertaining thereto by the judges, a division may use the same jury panel as that summoned for services in the superior court. When selected from the superior court panel, persons so selected for jury duty in a municipal court division need not be residents of the division.

SEC. 8. Section 74020 of the Government Code is amended to read:

74020. This article shall be applicable to the municipal court hereby established for the geographical area encompassing the entire County of Placer, which shall hereby be known as the Placer County Municipal Court.

SEC. 9. Section 74020.5 is added to the Government Code, read:

74020.5. (a) For the purposes of the qualification and election of a judge for the Tahoe Division, the Tahoe Division shall constitute a district for purposes of subdivision (b) of Section 16 of Article VI of the California Constitution.

(b) The territory comprising the former Tahoe Judicial District shall constitute the Tahoe Division of the Placer County Municipal Court.

(c) Trial jurors for each session of the Tahoe Division shall be selected from persons residing within the division. Trial jurors for each session of all other courts of the Placer County Municipal Court shall be selected from persons residing within the county, excluding those persons residing within the division.

SEC. 10. Section 74021 of the Government Code is amended to read:

74021. There shall be four judges and one commissioner. The salary of the commissioner shall be 75 percent of that of a municipal court judge. The judge of the Tahoe Judicial District shall succeed to office as municipal court judge for the Tahoe Division for the remainder of the term to which he or she was elected or appointed. The court shall provide circuit judge services to all branch courts established by the board of supervisors. The frequency and extent of such services shall be dependent upon the needs of the community and shall lie within the sound discretion of the court.

SEC. 11. Article 29.6 (commencing with Section 74720) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 29.6. Siskiyou County

74720. The Siskiyou County Municipal Court District shall supersede the Western, Southeastern, and Dorris/Tulelake Judicial Districts and shall embrace the entire County of Siskiyou.

74721. There shall be three judges.

74722. The present judicial incumbents in the superseded judicial districts shall succeed to the judicial positions of the new municipal court district.

74723. The time for election and qualifications of the successor to any judge who becomes a judge of the municipal court shall be that previously fixed by law for the election and qualifications of successors. The judges of the district shall be elected at large by the electors resident within the district. Any otherwise qualified candidate is eligible to be elected if he or she resides within the district.

74724. The court shall maintain facilities at Yreka, Dorris, Weed, and other locations determined by the court. The court shall determine the nature and frequency of sessions to be held at additional court locations.

74725. Trial jurors for each session of the courts of the district shall be selected from the persons residing within the district.

74726. The officers, employees, and attachés of the municipal court shall be entitled to the same vacation, sick leave, and similar benefits and privileges as those granted to other employees of the county. Incumbent officers, employees, and attachés of the superseded courts shall retain all accrued benefits and privileges.

74727. (a) All matters affecting the employment of the officers, employees, and attachés that are not specifically determined by this article or another provision of state law shall be governed by the current personnel ordinance of the County of Siskiyou.

(b) The Board of Supervisors of the County of Siskiyou may adjust the salaries paid to employees of the municipal court as part of its county employee compensation plan. Any adjustment shall be effective on the same date as the effective date of the action of the board to adjust compensation of other county employees. Any adjustment shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

74728. The Siskiyou County Sheriff shall be ex officio marshal.

74729. There shall be three deputy marshals. Any person lawfully and rightfully holding the office of constable on November 8, 1994, is entitled to serve as deputy marshal, with the same compensation and the same terms of employment he or she had as a constable, for the remainder of his or her elected or appointed term.

74730. So long as a new position of deputy marshal is occupied by a person who occupied the position of a constable prior to November 8, 1995, the relationship of the new deputy marshal to the County of Siskiyou shall remain the same as the relationship of such person occupying the office of constable was prior to November 8, 1994. Nothing shall be interpreted as waiving any rights the County of Siskiyou may have with regard to, or changing the status of, any person occupying the position of constable prior to November 8, 1994, or as affecting the rights of any person claiming a right to occupy the

position of constable prior to November 8, 1994, except to the extent permitted by Proposition 191 amending Section 5 of Article VI of the California Constitution.

74731. Except as otherwise provided, the designated deputies of the Sheriff of Siskiyou County shall act as ex officio deputy marshals of the Siskiyou County Municipal Court.

SEC. 12. Article 30.1 (commencing with Section 74760) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 30.1. Glenn County

74760. The Glenn County Municipal Court District shall supersede the Glenn County Judicial District and shall embrace the entire County of Glenn.

74761. There shall be one judge.

74762. The incumbent judge of the superseded judicial district in that office on November 8, 1994, shall succeed to the judgeship of the municipal court district.

74763. The time for election and qualification of the successor to the judge who becomes the first judge of the municipal court shall be that previously fixed by law for the election and qualifications of successors to municipal court judges generally. The judge shall be elected at large by the electors resident within the district.

74764. The court shall maintain facilities at Willows and other locations determined by the court. The court shall determine the nature and frequency of sessions to be held at additional court locations.

74765. (a) All matters affecting the employment of the officers, employees, and attachés of the municipal court that are not specifically determined by this article or another provision of state law shall be governed by the personnel ordinance and resolutions of the County of Glenn.

(b) The officers, employees, and attachés of the municipal court shall be entitled to the same vacation, sick leave, and similar benefits and privileges as those granted to other employees of the county who are not represented by an employee association authorized to meet and confer with the County of Glenn over the terms and conditions of the employment of the employees represented by the association. Incumbent officers, employees, and attachés of the superseded court shall retain all accrued benefits and privileges resulting from service in the superseded court.

(c) The Board of Supervisors of the County of Glenn may adjust the salaries paid and benefits provided to employees of the municipal court as part of its county employee compensation plan. Any adjustment shall be effective on the same date as the effective date of the action of the board to adjust compensation of other county employees. Any adjustment shall be effective only until January 1 of

the second year following the year in which the adjustment is made, unless ratified by the Legislature.

74766. (a) The Constable of the Glenn County Judicial District in office on November 8, 1994, is entitled to serve as marshal of the municipal court, with the same compensation and the same terms of employment enjoyed as that constable, for the remainder of the constable's elected term.

(b) Upon expiration of the term of the person first holding the office of marshal, or upon the first vacancy in that office, the office shall thereafter be an appointive office, and the marshal shall thereafter be appointed by and serve at the pleasure of the court.

74767. (a) Notwithstanding any other provision of this title, the Board of Supervisors of Glenn County, with the written consent of the majority of judges of the Glenn County Superior and Municipal Courts, may order the consolidation of court-related services provided by the marshal and the sheriff within that county. If the judges of these courts fail to notify the board of supervisors within 90 days of the board's request for the judges' consent, or if the judges are evenly divided on the matter, the board of supervisors shall determine under which agency, either the marshal or the sheriff, court-related services shall be consolidated, and shall proceed to implement the consolidation as if the written consent of a majority of the judges of these courts had been presented to the board of supervisors.

(b) Except as provided in subdivision (f), all personnel of the marshal's office or personnel of the sheriff's office affected by a consolidation of court-related services under this section shall become employees of that consolidated office at their existing or equivalent classifications, salaries, and benefits.

(c) Permanent employees of the marshal's office or sheriff's office on the effective date of consolidation under this section who become employees of the consolidated office shall be deemed permanent employees of the consolidated office. Probationary employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section who become employees of the consolidated office shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(d) All county service or service by employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall be counted toward seniority in that court-related services office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) No employee of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall lose peace officer status, or be demoted or otherwise adversely affected solely because of the consolidation of court-related services, unless the

number of authorized deputy sheriff positions that are vacant on the effective date of the consolidation is less than the number of sheriff's bailiffs who do not elect to accept other employment in the sheriff's office or employment in the marshal's office pursuant to subdivision (f).

(f) If court-related services are consolidated under the marshal's office, all sheriff's bailiffs affected by the consolidation shall be given the option of becoming employees of the marshal's office or of remaining with the sheriff's office. If all deputy marshal positions are not filled because of the exercise of this option by these bailiffs, the marshal may accept qualified applicants from the sheriff's office under the provisions of subdivisions (b), (c), (d), and (e).

SEC. 12.5. Section 74922 of the Government Code is amended to read:

74922. The then current personnel rules and ordinances of the county shall govern the hiring date; increases within range; salary on promotion, transfer, or demotion; salary on position reclassification, obligations and benefits and discipline of municipal court officers and attachés.

All other matters affecting the employment of such municipal court officers and attachés which are not specifically determined by this article or other provisions of state law shall be as determined by the board of supervisors.

SEC. 13. Section 74925 of the Government Code is amended to read:

74925. Notwithstanding Section 72190, a majority of the judges of the district may appoint one commissioner who shall hold office at the pleasure of a majority of the judges. The commissioner shall serve all the divisions by agreement of the judges. The commissioner shall receive a salary of not less than 70 nor more than 80 percent of the salary of a judge of the municipal court. The salary shall be determined by the board of supervisors within this range. The commissioner shall possess the same qualifications as the law requires of a judge of the municipal court and shall not engage in the private practice of law. The commissioner shall be an ex officio deputy clerk of the court and shall receive vacation, sick leave, and fringe benefits as determined by the board of supervisors.

Membership in the Tulare County Retirement System shall be optional at the election of the commissioner. The commissioner shall make an irrevocable election whether or not to participate in the retirement system no later than 60 days after appointment to the position.

SEC. 14. Section 74926.5 of the Government Code is amended to read:

74926.5. The officers and attachés of the municipal courts, except regular official reporters and reporters pro tempore, shall be entitled to the same vacation, sick leave, leave of absence, and similar benefits and privileges as are provided for the employees of the County of

Tulare under ordinances and resolutions of the board of supervisors in effect on January 1, 1991, or as thereafter revised or amended by the board of supervisors.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 955

An act to amend Section 66426 of, and to add Section 66418.2 to, the Government Code, relating to environmental subdivisions.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 66418.2 is added to the Government Code, to read:

66418.2. (a) "Environmental subdivision" means a subdivision of land pursuant to this division for biotic and wildlife purposes that meets all of the conditions specified in subdivision (b).

(b) Prior to approving or conditionally approving an environmental subdivision, the local agency shall find each of the following:

(1) That factual biotic or wildlife data, or both, are or will be available to the local agency approving the environmental subdivision to support the application for approval.

(2) That provisions have been made for the perpetual maintenance of the property as a biotic or wildlife habitat, or both, in accordance with the conditions specified by any local, state, or federal agency requiring mitigation.

(3) That an easement has been recorded in the county in which the land is located to ensure compliance with the conditions specified by any local, state, or federal agency requiring the mitigation. The easement shall contain a covenant with a county, city, or nonprofit organization running with the land in perpetuity, that the landowner shall not construct or permit the construction of improvements except those for which the right is expressly reserved in the

instrument. This reservation shall be not inconsistent with the purposes of this section and shall not be incompatible with maintaining and preserving the biotic or wildlife character, or both, of the land.

(4) The real property is at least 20 acres in size, or it is less than 20 acres in size, but is contiguous to other land that would also qualify as an environmental subdivision and the total combined acreage would be 20 acres or more.

(c) Notwithstanding subdivision (a) of Section 66411.1, any improvement, dedication, or design required by the local agency as a condition of approval of an environmental subdivision shall be solely for the purposes of ensuring compliance with the conditions required by the local, state, or federal agency requiring the mitigation.

(d) After recordation of an environmental subdivision, a subdivider may only abandon an environmental subdivision by reversion to acreage pursuant to Chapter 6 (commencing with Section 66499.11) if the local agency finds that all of the following conditions exist:

(1) None of the parcels created by the environmental subdivision has been sold or exchanged.

(2) None of the parcels is being used, set aside, or required for mitigation purposes pursuant to this section.

(3) Upon abandonment and reversion to acreage pursuant to this subdivision, the easement for biotic and wildlife purposes is extinguished.

(e) If the environmental subdivision is abandoned and reverts to acreage pursuant to subdivision (d), all local, state, and federal requirements shall apply.

(f) This section shall apply only upon the written request of the landowner at the time the land is divided. This section is not intended to limit or preclude subdivision by other lawful means for the mitigation of impacts to the environment, or of the land devoted to these purposes, or to require the division of land for these purposes.

(g) Notwithstanding any other provision of law, no legislative body shall approve or conditionally approve a subdivision pursuant to this section on or after January 1, 2003.

SEC. 2. Section 66426 of the Government Code, as amended by Chapter 1192 of the Statutes of 1979, is amended to read:

66426. A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code, a community apartment project containing five or more parcels, or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where any one of the following occurs:

(a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street

or highway, and no dedications or improvements are required by the legislative body.

(b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway.

(c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths.

(d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section.

(e) Until January 1, 2003, the land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2.

(f) A parcel map shall be required for those subdivisions described in subdivisions (a), (b), (c), (d), and (e).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 956

An act to add Article 5 (commencing with Section 17760) to Chapter 22 of Part 10 of the Education Code, relating to school facilities finance.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Article 5 (commencing with Section 17760) is added to Chapter 22 of Part 10 of the Education Code, to read:

Article 5. Joint Venture School Facilities Construction Projects

17760. (a) A school district may enter into a joint venture relationship for the purposes of school facilities construction. Notwithstanding any other provision of this chapter, a school district

entering into a joint venture relationship does so as an independent entity and not as an agent of the State Allocation Board.

(b) For the purposes of this article, "joint venture" means a collaborative undertaking by two or more persons or organizations for a specific project or projects, having the legal characteristics of a partnership.

(c) The joint venture relationship may, but is not required to, include any of the following:

(1) Joint use of the property of, or facilities on, the project site.

(2) Ground leases, alternative financing arrangements, or similar financing arrangements.

(3) A construction arrangement in which a school district enters into an agreement with a developer pursuant to which the school district initially stipulates the basic performance and programmatic criteria for the facility and the developer provides input into the design work and building construction services by entering into a contract with a single source team to administer the project in a manner consistent with state law, and construct the project to, under most circumstances, a maximum price.

(d) The price for the portion of the project that is funded by the state shall be established through a bidding process as approved by the State Allocation Board. All subcontract trade groups that are included within the project, shall be determined based upon competitive bidding for each contract group. All subcontracts shall be awarded to the lowest responsible bidder.

(e) The proposed uses of any facilities constructed under the joint venture project shall not be inconsistent with educational purposes and activities.

(f) The cost of any project funded under this article shall not exceed the maximum cost that would otherwise be allowable for a project funded under this chapter.

17761. (a) A school district may apply to the State Allocation Board for funding for the costs of property acquisition and the cost of construction, as specified in this chapter, of the school facilities portion of a joint venture project. The school district shall publicly solicit proposals for the joint venture project pursuant to the procedures set forth in this section and Sections 17762, 39447, 39448, and 39449.

(b) Upon review of the application for funding, the State Allocation Board shall establish the maximum allowances for construction of the school facilities portion of the joint venture project. For the purpose of calculating allowances pursuant to Article 3 (commencing with Section 17740), the State Allocation Board shall use the information used to determine the allowances for the school district at the time the district received approval of funds under this chapter to acquire property on which the school facilities will be constructed, or at the time an application is made pursuant to subdivision (a), whichever is earlier.

(c) The State Allocation Board may approve, in whole or in part, an application submitted by a school district pursuant to this section in an amount the State Allocation Board may deem appropriate, not to exceed the amount applied for, subject to final approval of the joint venture agreement pursuant to Section 17763.

(d) For purposes of this section, and the process referred to in subdivision (a), a school district joint venture request for proposals shall include, but not necessarily be limited to, all of the following:

(1) A specific description of the school buildings or land, or both, to be constructed or utilized under the joint venture and a description of how the costs of the project have been determined.

(2) The identification of the current educational uses of the school buildings or land, or both, and of the educational uses proposed under the joint venture.

(3) The identification of the current noneducational uses of the proposed school buildings or land, or both, and of the noneducational uses proposed under the joint venture, and a specific assessment of the compatibility of those uses with any applicable general or specific governmental land use plan and with applicable zoning restrictions.

(4) A description of the prospective economic benefits to be derived by the school district from the joint venture.

(5) A description of the prospective educational benefits to be derived by the school district from the joint venture.

(6) A request that each request for proposal response include a comprehensive description of the joint venture, including, but not limited to, a description of the intended means of financing the joint venture.

17762. (a) Notwithstanding Sections 20111 and 20118.4 of the Public Contract Code, or any other law, upon approval of funding pursuant to Section 17761, a school district may utilize a request for qualifications and proposal process described in subdivision (a) of Section 17761 to select and enter into a joint venture agreement with a developer to construct school facilities. The agreement may utilize Section 39305.

(b) The joint venture agreement shall include, but not be limited to, all of the following terms:

(1) The cost of the project approved by the State Allocation Board pursuant to Section 17761 as the amount that the district will pay to the developer pursuant to the joint venture agreement upon completion of the project, if applicable.

(2) A detailed description of the project, including, but not limited to, the school facilities and any other facilities that may be included in the project and any other information necessary to meet the requirements of this chapter.

(3) The timeframe for completion of the project.

(4) A requirement that there shall be no state liability if funds are not made available within the four-year period specified in subdivision (a) of Section 17763.

(c) The joint venture agreement may also include a requirement that if the actual cost of constructing the school facility project designated in the agreement exceeds the amount set forth in that agreement, the developer shall be responsible for the additional expense.

(d) The lien placed on a schoolsite pursuant to this chapter shall only attach to that portion of the project for which state funds are actually expended. In addition, the lien shall expressly recognize any subordinate property interest created by the joint venture, and the state lien shall not be foreclosed or otherwise used to terminate the property interest, or any subordinate financing liens incidental thereto, created by the joint venture. The document creating that lien on a schoolsite shall be written in a manner to clearly prohibit assumption of any state liability resulting from the lien.

(e) Notwithstanding subdivision (d), the nondisturbance of subordinate property interests permitted in subdivision (d) shall not permit the foreclosure or other private taking of actual school facilities or property paid for with state funds in a manner that would restrict, terminate, or impair the school facilities portion of the joint venture or the school district's use thereof.

17763. Upon completion of the joint venture agreement pursuant to Section 17762, the school district shall transmit the agreement to the State Allocation Board for final review to determine whether the agreement is consistent with the project approval pursuant to Section 17761. The State Allocation Board shall act to approve or disapprove the complete agreement within 60 days following submission of the complete proposal to the State Allocation Board. The approval or disapproval relates to only the decision by the State Allocation Board to fund the school portion of the joint venture project and is not to be construed as an approval or disapproval of the terms and conditions of the joint venture agreement nor as authority for the school district to act as the agent of the State Allocation Board. The State Allocation Board is not made a party to the joint venture agreement and shall not incur liability under the joint venture agreement through its approval or disapproval of the agreement. The joint venture shall indemnify and hold harmless the State Allocation Board and its officers, agents, and employees from any loss or liability, including reasonable attorneys fees and costs, caused by the joint venture arising out of, or in relation to, any contract entered into by the joint venture in furtherance of the joint venture project. The date of approval by the State Allocation Board of the project shall be the date of funding eligibility for the project. The apportionment of funds for the eligible project shall be made at any point up to four years following the date of funding eligibility subject to the availability of funds for this purpose. If the state funds are not available within that four-year period, the school district may at its option remain in the funding cycle, subject to other provisions of this chapter, until the school district receives all of the funds it is eligible

to receive pursuant to this article as of the date of funding eligibility. The district's eligibility for reimbursement of authorized costs and the district's position in the processing schedule for the reimbursement shall be established as the date of project approval by the State Allocation Board. The exact amount of the reimbursement shall be determined at the conclusion of the project and shall be based upon the actual subcontract trade bids and other costs allowable pursuant to Section 17719.3.

17764. The selection of any design professional pursuant to this article shall be made in accordance with Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

17765. The design and construction of school facilities pursuant to this article shall comply with Article 3 (commencing with Section 39140) of Chapter 2 of Part 23.

17766. This article does not affect any requirement of a school district to comply with the prevailing wage requirements of Article 2 (commencing with Section 1770) of Chapter 2 of Part 7 of Division 2 of the Labor Code with respect to the school facilities portion of a joint venture project under this article.

CHAPTER 957

An act to amend Sections 17601 and 17605.05 of to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 17601 of the Welfare and Institutions Code is amended to read:

17601. On or before the 27th day of each month, the Controller shall allocate to the mental health account of each local health and welfare trust fund the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Mental Health Subaccount of the Sales Tax Account in the Local Revenue Fund in accordance with the following schedules:

(a) (1) Schedule A—State Hospital and Community Mental Health Allocations.

Jurisdiction	Allocation Percentage
Alameda	4.882
Alpine	0.018
Amador	0.070

Butte	0.548
Calaveras	0.082
Colusa	0.073
Contra Costa	2.216
Del Norte	0.088
El Dorado	0.285
Fresno	2.045
Glenn	0.080
Humboldt	0.465
Imperial	0.342
Inyo	0.104
Kern	1.551
Kings	0.293
Lake	0.167
Lassen	0.087
Los Angeles	28.968
Madera	0.231
Marin	0.940
Mariposa	0.054
Mendocino	0.332
Merced	0.546
Modoc	0.048
Mono	0.042
Monterey	0.950
Napa	0.495
Nevada	0.191
Orange	4.868
Placer	0.391
Plumas	0.068
Riverside	2.394
Sacramento	3.069
San Benito	0.090
San Bernardino	3.193
San Diego	5.603
San Francisco	4.621
San Joaquin	1.655
San Luis Obispo	0.499
San Mateo	2.262
Santa Barbara	0.949
Santa Clara	4.112

Santa Cruz	0.558
Shasta	0.464
Sierra	0.026
Siskiyou	0.137
Solano	1.027
Sonoma	1.068
Stanislaus	1.034
Sutter/Yuba	0.420
Tehama	0.181
Trinity	0.055
Tulare	0.941
Tuolumne	0.121
Ventura	1.472
Yolo	0.470
Berkeley	0.190
Tri–City	0.165

The amounts allocated in accordance with Schedule A for the 1991–92 fiscal year shall be considered the base allocations for the 1992–93 fiscal year.

(2) The funds allocated pursuant to Schedule B shall be increased to reflect the addition of percentages for the Institute for Mental Disease allocation pursuant to paragraph (1) of subdivision (c).

(3) The Controller shall allocate three million seven hundred thousand dollars ($3,700,000) to the counties pursuant to a percentage schedule developed by the Director of Mental Health as specified in subdivision (c) of Section 4095. The funds allocated pursuant to Schedule A shall be increased to reflect the addition of this schedule.

(4) (A) The department may amend Schedule A in order to restore counties funds associated with multicounty regional programs.

(B) Notwithstanding any other provision of law, the department shall amend Schedule A for the purpose of establishing mental health base allocations for each county for the 1994–95 fiscal year and fiscal years thereafter, in order to ensure that mental health base allocations for each county do not fall below 75 percent of the allocations for the 1989–90 fiscal year. The money specified in subdivision (c) of Section 17605.05 shall be used for this purpose.

(b) (1) Schedule B—State Hospital Payment Schedule.

From the amounts allocated in accordance with Schedule A, each county and city shall reimburse the Controller for reimbursement to the State Department of Mental Health, for the 1991–92 fiscal year only, an amount equal to one-ninth of the amount identified in Schedule B as modified to reflect adjustments pursuant to paragraph

(2) of subdivision (a) of Section 4330. The reimbursements shall be due the 24th day of each month and the first payment shall be due on October 24, 1991. During the 1992–93 fiscal year and fiscal years thereafter, each monthly reimbursement shall be one-twelfth of the total amount of the county's contract with the department for state hospital services.

Jurisdiction	First Year State Hospital Withholding
Alameda	$ 15,636,372
Berkeley City	0
Alpine	95,379
Amador	148,915
Butte	650,238
Calaveras	100,316
Colusa	189,718
Contra Costa	8,893,339
Del Norte	94,859
El Dorado	236,757
Fresno	1,429,379
Glenn	51,977
Humboldt	727,684
Imperial	259,887
Inyo	363,842
Kern	4,024,613
Kings	266,904
Lake	292,373
Lassen	167,367
Los Angeles	102,458,700
Tri–City	0
Madera	131,243
Marin	3,248,590
Mariposa	117,989
Mendocino	471,955
Merced	404,125
Modoc	94,859
Mono	94,859
Monterey	2,079,097
Napa	2,338,985
Nevada	493,786
Orange	14,066,133

Placer	847,232
Plumas	130,463
Riverside	4,891,077
Sacramento	4,547,506
San Benito	259,887
San Bernardino	5,587,574
San Diego	6,734,976
San Francisco	23,615,688
San Joaquin	927,018
San Luis Obispo	719,887
San Mateo	6,497,179
Santa Barbara	2,168,758
Santa Clara	7,106,095
Santa Cruz	1,403,391
Shasta	1,169,492
Sierra	94,859
Siskiyou	129,944
Solano	5,332,885
Sonoma	2,669,041
Stanislaus	1,740,205
Sutter/Yuba	363,842
Tehama	363,842
Trinity	94,859
Tulare	675,707
Tuolumne	304,328
Ventura	3,378,533
Yolo	1,169,492

(2) (A) (i) During the 1992–93 fiscal year, in lieu of making the reimbursement required by paragraph (1), a county may elect to authorize the Controller to reimburse the State Hospital Account of the Mental Health Facilities Fund a pro rata share each month computed by multiplying the ratio of the reimbursement amount owed by the county as specified in Schedule B to the total amount of money projected to be allocated to the county pursuant to Schedule A by the funds available for deposit in the mental health account of the county's health and welfare trust fund.

(ii) The reimbursement shall be made monthly on the same day the Controller allocates funds to the local health and welfare trust funds.

(B) During the 1992–93 fiscal year and thereafter, the amount to be reimbursed each month shall be computed by multiplying the ratio of the county's contract for state hospital services to the amount

of money projected to be allocated to the county pursuant to Schedule A by the funds available for deposit in the mental health account of the county's health and welfare trust fund.

(C) All reimbursements, deposits, and transfers made to the Mental Health Facilities Fund pursuant to a county election shall be deemed to be deposits to the local health and welfare trust fund.

(3) (A) Counties shall notify the Controller, in writing, by October 15, 1991, upon making the election pursuant to paragraph (2). The election shall be binding for the fiscal year. The pro rata share of allocations made prior to the election by the county shall be withheld from allocations in subsequent months until paid.

(B) For the 1992–93 fiscal year and fiscal years thereafter, counties shall notify the Controller, in writing, by July 1 of the fiscal year for which the election is made, upon making the election pursuant to paragraph (2).

(4) Regardless of the reimbursement option elected by a county, no county shall be required to reimburse the Mental Health Facilities Fund by an amount greater than the amount identified in Schedule B as modified to reflect adjustments pursuant to paragraph (2) of subdivision (a) of Section 4330.

(c) (1) For the 1991–92 fiscal year, the Controller shall distribute monthly beginning in October from the Mental Health Subaccount of the Sales Tax Account of the Local Revenue Fund to the mental health account of each local health and welfare trust fund one-ninth of the amount allocated to the county in accordance with the institutions for mental disease allocation schedule established by the State Department of Mental Health.

(2) Each county shall forward to the Controller, monthly, an amount equal to one-ninth of the amount identified in the schedule established by the State Department of Mental Health. The reimbursements shall be due by the 24th day of the month to which they apply, and the first payment shall be due October 24, 1991. These amounts shall be deposited in the Institutions for Mental Disease Account in the Mental Health Facilities Fund.

(3) (A) (i) During the 1991–92 fiscal year, in lieu of making the reimbursement required by paragraph (1), a county may elect to authorize the Controller to reimburse the Institutions for Mental Disease Account of the Mental Health Facilities Fund a pro rata share each month computed by multiplying the ratio of the reimbursement amount owed by the county as specified in Schedule B to the total amount of money projected to be allocated to the county pursuant to Schedule A by the funds available for deposit in the mental health account of the county's health and welfare trust fund.

(ii) The reimbursement shall be made monthly on the same day the Controller allocates funds to the local health and welfare trust funds.

(B) During the 1992–93 fiscal year and thereafter, the amount to be reimbursed each month shall be computed by multiplying the

ratio of the county's contract for mental health services to the amount of money projected to be allocated to the county pursuant to Schedule A by the funds available for deposit in the mental health account of the county's health and welfare trust fund.

(C) All reimbursements, deposits, and transfers made to the Mental Health Facilities Fund pursuant to a county election shall be deemed to be deposits to the local health and welfare trust fund.

(4) (A) Counties shall notify the Controller, in writing, by October 15, 1991, upon making the election pursuant to paragraph (3). The election shall be binding for the fiscal year. The pro rata share of allocations made prior to the election by the county shall be withheld from allocations in subsequent months until paid.

(B) For the 1992–93 fiscal year and fiscal years thereafter, counties shall notify the Controller, in writing, by July 1 of the fiscal year for which the election is made, upon making the election pursuant to paragraph (2).

(5) Regardless of the reimbursement option elected by a county, no county shall be required to reimburse the Institutions for Mental Disease Account in the Mental Health Facilities Fund an amount greater than the amount identified in the schedule developed by the State Department of Mental Health pursuant to paragraph (1).

(d) The Controller shall withhold the allocation of funds pursuant to subdivision (a) in any month a county does not meet the requirements of paragraph (1) of subdivision (b) or paragraph (2) of subdivision (c), in the amount of the obligation and transfer the funds withheld to the State Department of Mental Health for deposit in the State Hospital Account or the Institutions for Mental Disease Account in the Mental Health Facilities Fund, as appropriate.

SEC. 2. Section 17605.05 of the Welfare and Institutions Code is amended to read:

17605.05. (a) For the 1992–93 fiscal year and fiscal years thereafter, after satisfying the obligations set forth in Section 17605, the Controller shall deposit into the Base Restoration Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, the remainder of those revenues deposited in the Sales Tax Growth Account of the Local Revenue Fund, up to a cumulative amount, that, in conjunction with local matching funds pursuant to Section 17608.15, is sufficient to fund the difference between two billion two hundred nineteen million four hundred ten thousand two hundred sixty dollars ($2,219,410,260), less the amount allocated pursuant to subdivision (a) of Section 17605, and actual amounts distributed for the 1991–92 fiscal year pursuant to this chapter.

(b) On or before the 27th day of each month, the Controller shall allocate to the appropriate accounts in the local health and welfare trust fund the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Base Restoration Subaccount of the Sales Tax Growth Account pursuant to a schedule developed by the Department of Finance, in consultation with the

appropriate state departments and the California State Association of Counties, based on each county's, city's, and city and county's share of the funds determined pursuant to subdivision (a), including the adjustment made for individual counties and cities and counties that received funds allocated pursuant to subdivision (a) of Section 17605.

(c) For the 1994–95 fiscal year and fiscal years thereafter, in addition to the amount of mental health funding provided pursuant to Chapter 89 of the Statutes of 1991, five million dollars ($5,000,000) shall be provided for restoration of mental health base funding included in subdivision (a) of Section 2 of Chapter 1323 of the Statutes of 1990.

CHAPTER 958

An act to add Section 1641.2 to the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 1641.2 is added to the Revenue and Taxation Code, to read:

1641.2. Notwithstanding the provisions of Section 1604, if within 90 days of the expiration of the two-year period specified in Section 1604 within which a county board is required to hear evidence and make a final determination on an application for reduction in assessment, a taxpayer or his or her agent objects to an assessment appeals board member pursuant to Section 1624.4 or makes application for a hearing officer's recommendation to be heard before the county board pursuant to Section 1641.1, the two-year period shall be extended by 90 days.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The current load of assessment appeals has overextended the resources of counties to promptly make final determinations without closely approaching statutory deadlines. An unscrupulous taxpayer or agent could intentionally delay the filing of certain documents to produce a default situation, thereby necessitating undeserved refunds and assessment reductions. This situation places vital local government funding in jeopardy.

CHAPTER 959

An act to amend Section 19610.3 and 19610.4 of, and to amend, repeal, and add Section 19405 of, the Business and Professions Code, relating to horseracing.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 19405 of the Business and Professions Code is amended to read:

19405. (a) "Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten cents ($0.10). However, at a quarter horse meeting, "breakage" is the odd cents by which the amount payable on each dollar wagered exceeds a multiple of five cents ($0.05).

(b) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends that date.

SEC. 2. Section 19405 is added to the Business and Professions Code, to read:

19405. (a) "Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten cents ($0.10).

(b) This section shall become operative January 1, 1999.

SEC. 3. Section 19610.3 of the Business and Professions Code is amended to read:

19610.3. In addition to the amounts required or allowed to be deducted from the parimutuel pools as provided by this chapter, and except as otherwise provided in this section, every association that conducts a racing meeting may elect permanently to deduct an additional amount up to 0.33 of 1 percent from the total parimutuel wagers placed within its inclosure. This election is not available to the California Exposition and State Fair or to a county or district agricultural association fair unless, prior to January 1, 1984, the city or county in which the fair meeting was being conducted levied a license fee or excise tax pursuant to Section 19495 or imposed an admission tax on track patrons.

The amounts deducted pursuant to this section shall be retained by the association or fair for the payment of possessory interest taxes, if any, assessed against the organization described in Section 19608.2, the racing association, or fair, and after payment of these taxes shall be distributed to the city in which the racing meeting is conducted or, if the meeting is conducted outside the limits of any city, to the county in which the racing meeting is conducted. If a city or county

has elected by ordinance to receive a distribution from a racing association under this section, it shall not at any time thereafter assess or collect, with respect to an event conducted by that racing association, or an event conducted by or by contract with that association or fair, any license or excise tax or fee, including, but not limited to, any admission, parking, or business tax, or any tax or fee levied solely upon the racing association conducting a racing meeting or any racing patron, participant, service-supplier, promoter, or vendor thereof. Further, a city or county electing to receive a distribution under this section shall continue to provide ordinary and traditional municipal services, such as police services and traffic control, in connection with racing meetings. "Ordinary and traditional services," as used in this section, means those services provided by the city or county at no charge to the racing association in 1981. If an eligible city or county does not elect to receive a distribution under this section, the amount remaining after payment of possessory interest taxes, if any, as provided in this section shall be paid to the state as an additional license fee.

SEC. 4. Section 19610.4 of the Business and Professions Code is amended to read:

19610.4. Notwithstanding Section 19610.3, any association that conducts a racing meeting pursuant to Section 19549.3 or 19549.9, or any fair that operates a satellite wagering facility, may elect to deduct an additional amount of 0.33 of 1 percent from the total parimutuel wagers placed within its inclosure or at its satellite wagering facility.

The amounts deducted pursuant to this section shall be retained by the association or fair for the payment of possessory interest taxes, if any, assessed against the organization described in Section 19608.2, the racing association, or fair, and after payment of these taxes shall be distributed to the city or county in which the racing meeting or wagering is conducted, at the option of the association or fair. If a city or county has elected by ordinance to receive a distribution from a racing association or fair under this section, it shall not at any time thereafter assess or collect, with respect to an event conducted by that racing association or, an event conducted by or by contract with that fair, any license or excise tax or fee, including, but not limited to, any admission, parking, or business tax, or any tax or fee levied solely upon the racing association or fair conducting a racing meeting or satellite wagering, or any patron, participant, service-supplier, promoter, or vendor thereof. Further, a city or county electing to receive a distribution under this section shall provide ordinary and traditional municipal services, such as police services and traffic control, in connection with the racing meetings or satellite wagering. If an eligible city or county does not elect to receive a distribution under this section, the amount remaining after payment of

possessory interest taxes, if any, as provided in this section shall be paid to the state as an additional license fee.

CHAPTER 960

An act to amend Section 454.6 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 454.6 of the Public Utilities Code is amended to read:

454.6. (a) The commission shall establish rates for gas utilized in solar electric generation station technology projects at not higher than the rates established for gas utilized as a fuel by an electric plant in the generation of electricity.

For purposes of this section, a solar electric generation station technology project is a project which utilizes solar energy as the primary fuel in the generation of electricity, uses gas as a secondary fuel constituting 25 percent or less of the total fuel utilized on an equivalent basis, has a natural gas efficiency utilization rate of more than 60 percent, and qualifies as a small power production facility under the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617; 16 U.S.C. Sec. 796).

(b) Subdivision (a) shall be limited to solar electric generation station projects in operation on January 1, 1995.

(c) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that date.

CHAPTER 961

An act to amend Sections 14875, 14876, 14877.1, 14877.2, and 14877.3 of, and to amend the heading of Chapter 22 (commencing with Section 14875) of Division 7 of, the Water Code, relating to water.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. The heading of Chapter 22 (commencing with Section 14875) of Division 7 of the Water Code is amended to read:

CHAPTER 22. GRAYWATER SYSTEMS

SEC. 2. Section 14875 of the Water Code is amended to read:

14875. This chapter applies to the construction, installation, or alteration of graywater systems for subsurface irrigation and other safe uses.

SEC. 3. Section 14876 of the Water Code is amended to read:

14876. "Graywater" means untreated wastewater which has not been contaminated by any toilet discharge, has not been affected by infectious, contaminated, or unhealthy bodily wastes, and which does not present a threat from contamination by unhealthful processing, manufacturing, or operating wastes. Graywater includes wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, and laundry tubs but does not include wastewater from kitchen sinks or dishwashers.

SEC. 4. Section 14877.1 of the Water Code is amended to read:

14877.1. (a) On or before January 1, 1997, the department, in consultation with the State Department of Health Services and the Center for Irrigation Technology at California State University, Fresno, shall adopt standards for the installation of graywater systems. In adopting these standards, the department shall consider, among other resources, "Appendix J," as adopted on September 29, 1992, by the International Association of Plumbing and Mechanical Officials, the graywater standard proposed for the latest edition of the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials, the City of Los Angeles Graywater Pilot Project Final Report issued in November 1992, and the advice of the Center for Irrigation Technology at California State University, Fresno, on the installation depth for subsurface drip irrigation systems.

(b) The department shall include among the approved methods of subsurface irrigation, but shall not be limited to, drip systems.

(c) The department shall revise its graywater systems standards as needed.

SEC. 5. Section 14877.2 of the Water Code is amended to read:

14877.2. A graywater system may be installed if the city or county having jurisdiction over the installation determines that the system complies with standards adopted by the department.

SEC. 6. Section 14877.3 of the Water Code is amended to read:

14877.3. After a public hearing, a city or county may adopt, by ordinance, standards that prohibit the use of graywater or standards

that are more restrictive than the standards adopted by the department, as appropriate for the local area.

CHAPTER 962

An act to add Section 50026.5 to the Government Code, and to amend Section 4511 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 50026.5 is added to the Government Code, to read:

50026.5. (a) The legislative body of any local agency, chartered or general law, which is otherwise authorized by law or charter to impose any tax, shall not impose any tax, fee, or charge on or measured by the sale of any stocks, bonds, or any other securities.

(b) It is the intent of the Legislature to prohibit any imposition of any local tax, fee, or charge, in connection with the sale of those securities, whether that imposition is imposed on the transaction itself, on the privilege of engaging in any transaction, or in any other form.

(c) The Legislature finds and declares that the need for uniform statewide regulation and taxation of securities transactions is a matter of statewide concern, and it is the Legislature's intent to regulate the subject matter of securities comprehensively and to occupy the field to the exclusion of local action.

SEC. 2. Section 4511 of the Revenue and Taxation Code, as amended by Chapter 189 of the Statutes of 1995, is amended to read:

4511. Any county may, upon the recommendation of the tax collector, and by resolution of the board of supervisors of that county adopted during the fiscal year for which it is to first apply, sell tax certificates. If the board orders the discontinuance of the procedures authorized by this part, all of the following shall occur:

(a) All of the provisions of this part, other than Section 4521, shall remain in full force and effect until all tax certificates have been canceled.

(b) The county shall maintain the Tax Certificate Redemption Fund until all tax certificates have been canceled.

(c) After all tax certificates have been canceled, all funds on deposit in the Tax Certificate Redemption Fund shall be paid to the tax collector to be applied and distributed in the same manner as

amounts received from the collection of taxes and assessments and any costs, fees, penalties, or other amounts related thereto.

CHAPTER 963

An act to add Section 68083 to the Government Code, relating to courts.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 68083 is added to the Government Code, to read:

68083. (a) Upon the occurrence of a vacancy in a municipal court judgeship, other than the sole remaining municipal court judgeship for the county, if the Governor finds there are sufficient funds for the conversion of a municipal court judgeship into a superior court judgeship and finds that the administration of justice would be advanced by such a conversion, the number of municipal court judges for the county shall then be reduced by one and the number of superior court judges for the county shall be increased by one. Prior to making a determination, the Governor shall consider the following factors:

(1) The geographic separation of the two courts.

(2) The fiscal impact of the conversion.

(3) The existence of a coordination plan approved pursuant to Section 68112 of the Government Code that permits blanket cross-assignment of superior court judges and municipal court judges to assist in the timely processing of cases before all of the courts in the county.

(b) For purposes of this section, a vacancy in a municipal court judgeship shall be deemed to occur only upon the appointment or election of a municipal court judge to another office, or to a court other than a superior court judgeship which was created within three years pursuant to this section, upon the removal or death of the municipal court judge holding that judgeship, or upon the resignation or retirement of a municipal court judge who is 65 years of age or older.

(c) The Governor's finding shall become effective when received by the Secretary of State.

(d) When a finding by the Governor that a position should be reallocated takes effect, the Judicial Council shall reallocate to the

superior court the funding in support of the municipal court salary and the chamber staff positions as well as any other required funding.

CHAPTER 964

An act to amend Sections 206 and 237 of the Code of Civil Procedure, relating to juries.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. The Legislature finds and declares that jurors who have served on a criminal case to its conclusion have dutifully completed their civic duty. It is the intent of the Legislature in enacting this act to balance the interests of providing access to records of juror identifying information for a particular, identifiable purpose against the interests in protecting the jurors' privacy, safety, and well-being, as well as the interest in maintaining public confidence and willingness to participate in the jury system.

SEC. 2. Section 206 of the Code of Civil Procedure is amended to read:

206. (a) Prior to discharging the jury from the case, the judge in a criminal action shall inform the jurors that they have an absolute right to discuss or not to discuss the deliberation or verdict with anyone. The judge shall also inform the jurors of the provisions set forth in subdivisions (b), (c), and (d).

(b) Following the discharge of the jury in a criminal case, the defendant, or his or her attorney or representative, or the prosecutor, or his or her representative, may discuss the jury deliberation or verdict with a member of the jury, provided that the juror consents to the discussion and that the discussion takes place at a reasonable time and place.

(c) Any unreasonable contact with a juror by the defendant, or his or her attorney or representative, or by the prosecutor, or his or her representative, without the juror's consent shall be immediately reported to the trial judge.

(d) Any violation of this section shall be considered a violation of a lawful court order and shall be subject to reasonable monetary sanctions in accordance with Section 177.5 of the Code of Civil Procedure.

(e) Nothing in the section shall prohibit a peace officer from investigating an allegation of criminal conduct.

(f) Pursuant to Section 237, a defendant or defendant's counsel may, following the recording of a jury's verdict in a criminal proceeding, petition the court for access to personal juror

information within the court's records necessary for the defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose. This information may include jurors' names, addresses, and telephone numbers. The court shall consider all requests for juror identifying information pursuant to Section 237.

SEC. 3. Section 237 of the Code of Civil Procedure is amended to read:

237. (a) (1) The names of qualified jurors drawn from the qualified juror list for the superior court shall be made available to the public upon request unless the court determines that a compelling interest, as defined in subdivision (b), requires that this information should be kept confidential or its use limited in whole or in part.

(2) Upon the recording of a jury's verdict in a criminal jury proceeding, the court's record of personal juror identifying information, including names, addresses, and telephone numbers, shall be sealed until further order of the court as provided by this section.

(b) Any person may petition the court for access to these records. The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror's personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the identifying information, but shall not set the matter for hearing if there is a showing on the record of facts that establish a compelling interest against disclosure. A compelling interest includes, but is not limited to, protecting jurors from threats or danger of physical harm. If the court does not set the matter for hearing, the court shall by minute order set forth the reasons and make express findings either of a lack of a prima facie showing of good cause or the presence of a compelling interest against disclosure.

(c) If a hearing is set pursuant to subdivision (b), the petitioner shall provide notice of the petition and the time and place of the hearing at least 15 days prior to the date of the hearing to the parties in the criminal action. The court shall provide notice to each affected former juror by personal service or by first-class mail, addressed to the last known address of the former juror as shown in the records of the court. In a capital case, the petitioner shall also serve notice on the Attorney General. Any affected former juror may appear in person, in writing, by telephone, or by counsel to protest the granting of the petition. A former juror who wishes to appear at the hearing to oppose the unsealing of the personal juror identifying information may request the court to close the hearing in order to protect the former juror's anonymity.

(d) After the hearing, the records shall be made available as requested in the petition, unless a former juror's protest to the granting of the petition is sustained. The court shall sustain the

protest of the former juror if, in the discretion of the court, the petitioner fails to show good cause, the record establishes the presence of a compelling interest against disclosure as defined in subdivision (b), or the juror is unwilling to be contacted by the petitioner. The court shall set forth reasons and make express findings to support the granting or denying of the petition to disclose. The court may require the person to whom disclosure is made, or his or her agent or employee, to agree not to divulge jurors' identities or identifying information to others; the court may otherwise limit disclosure in any manner it deems appropriate.

(e) Any court employee who has legal access to juror information sealed under subdivision (a), who knowingly and in violation of a court order issued pursuant to subdivision (a), discloses the information shall be guilty of a misdemeanor.

(f) Any person who intentionally solicits another to unlawfully access or disclose juror information contained in records sealed under subdivision (a), knowing that the records have been sealed, or who knowing that the information was unlawfully secured, intentionally discloses it to another person shall be guilty of a misdemeanor.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 965

An act to amend Sections 13519 and 13730 of the Penal Code, relating to domestic violence.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 13519 of the Penal Code is amended to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to

domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (c) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (d) of Section 830.2, or a peace officer, as defined in subdivision (d) of Section 830.31.

(b) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, reportwriting, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) (1) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission.

(2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.

(3) (A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, shall be completed no later than January 1, 1992.

(B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.

(C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.

(4) Local law enforcement agencies are encouraged to include, as a part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to

domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.

SEC. 2. Section 13730 of the Penal Code is amended to read:

13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 966

An act to add and repeal Chapter 1.5 (commencing with Section 43025) of Part 5 of Division 26 of, and to repeal and add Section 43021 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 43021 of the Health and Safety Code is repealed.

SEC. 2. Section 43021 is added to the Health and Safety Code, to read:

43021. (a) For purposes of this section, "motor vehicle fuel distributor" means any person who (1) refines, blends, or otherwise produces motor vehicle fuel, or (2) with an ownership interest in the fuel, transports or causes the transport of motor vehicle fuel at any point between a production or import facility and a retail outlet, or sells, offers for sale, or supplies motor vehicle fuel to motor vehicle fuel retailers.

(b) Any motor vehicle fuel distributor who conducts business within the state shall, annually on January 1, inform the state board in writing of the distributor's principal place of business which shall be a physical address and not a post office box, and any other place of business at which company records are maintained or refining activities are conducted.

(c) The state board shall supply each complying motor vehicle fuel distributor with a certificate of compliance with this section not later than June 30. The certificate shall be effective from July 1 of the year of issuance through June 30 of the following year.

(d) All motor vehicle fuel distributors shall maintain complete records of each purchase, delivery, or supply of motor vehicle fuel for a period of not less than two years in the physical locations reported pursuant to subdivision (b) and shall not move the records to another physical location without notifying the state board of the new location. A complete record for each delivery shall consist of not less than a copy, or the information contained therein, of the bills of lading from the refinery or bulk terminal from which the fuel is received, the delivery ticket or receipt showing the location of the fuel at the time of sale, and the invoice showing the purchaser of the fuel. All those records may be kept in physical or electronic format and are subject to inspection and duplication by the state board.

(e) Any motor vehicle fuel distributor who intentionally fails to comply with subdivision (b) or (d) is liable for a civil penalty not to exceed one thousand dollars ($1,000) for each day of noncompliance.

(f) No person shall knowingly transport motor vehicle fuel for any motor vehicle fuel distributor who is not in possession of a current certificate of compliance as described in subdivision (c). Any person who transports or provides vehicles to transport motor vehicle fuel for a noncomplying distributor is liable for a civil penalty not exceeding ten thousand dollars ($10,000) per day as well as any penalties prescribed by Section 41963. However, any person who transports, or provides vehicles to transport, motor vehicle fuel for a distributor who is in possession of a current certificate of compliance shall not be liable for any penalties under this subdivision or Section 41963 unless that person has specific knowledge of noncompliance.

(g) Any retailer who knowingly sells or supplies motor vehicle fuel which was delivered to the retailer by, or on behalf of, a noncomplying motor vehicle fuel distributor is liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each transaction.

(h) Any retailer who sells motor vehicle fuel that does not comply with regulations of the state board, after both oral and written notice to cease have been delivered to the owner, manager, or attendant on duty at the facility, and upon failure to comply with that notice, is subject to the issuance of a cease and desist order by the state board and a penalty of ten thousand dollars ($10,000) for each day of noncompliance with the cease and desist order.

(i) The state board shall annually compile and publish a complete listing of all certified wholesale petroleum distributors, and shall mail a copy to every licensed transporter of petroleum products.

(j) This section shall become operative January 1, 1999.

SEC. 3. Chapter 1.5 (commencing with Section 43025) is added to Part 5 of Division 26 of the Health and Safety Code, to read:

CHAPTER 1.5. PENALTIES FOR VIOLATION OF FUEL REGULATIONS

43025. It is the intent of the Legislature in the enactment of this chapter to update the penalty provisions for violations of fuel regulations to ensure that the appropriate tools are available to effectively and fairly enforce state law. In enacting this chapter, it is not the intent of the Legislature to modify penalty settlements beyond historic levels. The civil and administrative penalty provisions in this chapter are designed to give the state board an effective, efficient, and flexible tool to fairly enforce all violations.

43026. (a) For purposes of this section, "motor vehicle fuel distributor" means any person who (1) refines, blends, or otherwise produces motor vehicle fuel, or (2) with an ownership interest in the fuel, transports or causes the transport of motor vehicle fuel at any

point between a production or import facility and a retail outlet, or sells, offers for sale, or supplies motor vehicle fuel to motor vehicle fuel retailers.

(b) Any motor vehicle fuel distributor who conducts business within the state shall, annually on January 1, inform the state board in writing of the distributor's principal place of business, which shall be a physical address and not a post office box, and any other place of business at which distributor records are maintained or refining activities are conducted.

(c) The state board shall supply each complying motor vehicle fuel distributor with a certificate of compliance with this section not later than June 30. The certificate shall be effective from July 1 of the year of issuance through June 30 of the following year.

(d) All motor vehicle fuel distributors shall maintain complete records of each purchase, delivery, or supply of motor vehicle fuel for a period of not less than two years in the physical locations reported pursuant to subdivision (b) and shall not move the records to another physical location without notifying the state board of the new location. A complete record for each delivery shall consist of not less than a copy, or the information contained therein, of the bills of lading from the refinery or bulk terminal from which the fuel is received, the delivery ticket or receipt showing the location of the fuel at the time of sale, and the invoice showing the purchaser of the fuel. All those records may be kept in physical or electronic format and are subject to inspection and duplication by the state board.

(e) Any motor vehicle fuel distributor who intentionally fails to comply with subdivision (b) or (d) is liable for a civil penalty not to exceed one thousand dollars ($1,000) for each day of noncompliance.

(f) No person shall knowingly transport motor vehicle fuel for any motor vehicle fuel distributor who is not in possession of a current certificate of compliance as described in subdivision (c). Any person who transports, or provides vehicles to transport, motor vehicle fuel for a noncomplying distributor is liable for a civil penalty not exceeding ten thousand dollars ($10,000) per day. However, any person who transports, or provides vehicles to transport, motor vehicle fuel for a distributor who is in possession of a current certificate of compliance shall not be liable for any penalties under this subdivision unless that person has specific knowledge of noncompliance.

(g) Any retailer who knowingly sells or supplies motor vehicle fuel which was delivered to the retailer by, or on behalf of, a noncomplying motor vehicle fuel distributor is liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each transaction.

(h) Any retailer who sells motor vehicle fuel that does not comply with regulations of the state board, after both oral and written notice to cease and desist have been delivered to the owner, manager, or attendant on duty at the retailer facility, and upon failure to comply

with that notice, is subject to the issuance of a cease and desist order by the state board and a penalty of ten thousand dollars ($10,000) for each day of noncompliance with the cease and desist order.

(i) The state board shall annually compile and publish a complete listing of all certified motor vehicle fuel distributors, and shall mail a copy to every licensed transporter of petroleum products.

43027. The following civil penalties apply to the following acts not included within Section 43026:

(a) Any person who willfully and intentionally violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, is liable for a civil penalty of not more than two hundred fifty thousand dollars ($250,000), and the prosecuting agency shall include a claim for an additional penalty in the amount of any economic gain that otherwise would not have been realized from the sale of the fuel determined to be in noncompliance.

(b) Any person who negligently violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, exclusive of the documentation requirements specified in subdivision (d), is liable for a civil penalty of not more than fifty thousand dollars ($50,000).

(c) Any person who violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, exclusive of the documentation requirements specified in subdivision (d), is strictly liable for a civil penalty of not more than thirty-five thousand dollars ($35,000).

(d) Any person who enters false information in, or fails to keep, any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, is strictly liable for a civil penalty of not more than twenty-five thousand dollars ($25,000). In determining the amount of the penalty to be assessed under this subdivision, the court, or in reaching any settlement, the Attorney General or the state board, shall take into consideration, in addition to subdivision (b) of Section 43031, the specific circumstances and intent of the defendant in making the false entry or in failing to keep the document.

43028. As an alternative to any civil penalties prescribed under this part, the state board may impose administrative civil penalties for a violation of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, if the state board has adopted rules and regulations specifying procedures for the imposition and amounts of those penalties. No administrative civil penalty levied pursuant to this section shall exceed twenty-five thousand dollars ($25,000) for each day on which there is a violation or three hundred thousand dollars ($300,000) in total. However, nothing in this section restricts the authority of the state board to negotiate mutual settlements under

any other penalty provision of law which exceed twenty-five thousand dollars ($25,000) for each day on which there is a violation or three hundred thousand dollars ($300,000) in total, except that the state board shall not rely on any provision of the Business and Professions Code.

43029. In an action to recover civil penalties pursuant to subdivisions (b) and (c) of Section 43027, a proceeding to assess administrative civil penalties pursuant to Section 43028, or a criminal prosecution pursuant to Section 43020, the prosecuting agency shall include a claim for an additional penalty designed to eliminate the economic benefits from noncompliance against any person who violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board pertaining to fuel requirements or standards as follows:

(a) For violations of gasoline requirements, the amount of the penalty shall equal the product of the number of tons of incremental increased vehicular emissions resulting from the manufacture, distribution, and sale of the specified volume of noncompliant fuel and nine thousand one hundred dollars ($9,100) per ton, which is the maximum calculated cost-effectiveness for California Phase 2 Reformulated Gasoline.

(b) For violations of diesel fuel requirements, the amount of the penalty shall equal the product of the number of tons of incremental increased vehicular emissions resulting from the manufacture, distribution, and sale of the specified volume of noncompliant fuel and five thousand two hundred dollars ($5,200) per ton, which is the maximum calculated cost-effectiveness for California low sulfur, low aromatics diesel fuel.

(c) To ensure that the penalties under subdivisions (a) and (b) continue to adequately reflect the goals of this section, the following shall occur annually:

(1) The cost-effectiveness values set forth in subdivisions (a) and (b) shall be adjusted to reflect the change in the annual average nationwide producers price index of industrial commodities, less fuels and related products and power, published by the United States Bureau of Labor Statistics, averaged over the previous 5 years.

(2) The methodologies used to calculate the excess emissions from noncompliant fuels shall be reviewed by the state board and updated as necessary.

43030. (a) For the penalties prescribed in Sections 43027 and 43028, each day during any portion of which a violation occurs is a separate offense.

(b) In applying penalties under Section 43027 or 43028 for violations based solely upon the state board's review of monthly production records, each day within a month for which a violation occurs is a separate violation.

(c) The recovery of civil or administrative civil penalties pursuant to this chapter precludes prosecution pursuant to Section 43020 for

the same offense. When the executive officer refers a violation to a prosecuting attorney, the filing of a criminal complaint is grounds requiring the dismissal of any civil action or administrative proceedings brought pursuant to this chapter for the same offense.

43031. (a) The civil or administrative civil penalties prescribed in this chapter shall be assessed and recovered either in a civil action brought in the name of the people of the State of California by the Attorney General or by the state board, or in administrative hearings established pursuant to regulations adopted by the state board.

(b) In determining the amount assessed, the court, the Attorney General, or the state board, in reaching any settlement, shall take into consideration all relevant circumstances, including, but not limited to, all of the following:

(1) The extent of harm to public health, safety, and welfare caused by the violation.

(2) The nature and persistence of the violation, including the magnitude of the excess emissions.

(3) The compliance history of the defendant, including the frequency of past violations.

(4) The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance.

(5) The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods.

(6) The efforts to attain, or provide for, compliance.

(7) The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation.

(8) For a person who owns a single retail service station, the size of the business.

43031.5. The revenues from penalties recovered by the state board pursuant to this chapter shall be deposited in the Air Pollution Control Fund and shall only be expended by the state board for environmental cleanup, abatement, or pollution prevention technology.

43032. On or before June 30, 1998, the state board shall report to the Assembly Committee on Natural Resources, the Assembly Committee on Transportation, the Senate Committee on Criminal Procedure, and the Senate Committee on Transportation all violations that are subject to this chapter, any settlements reached, and the rate of compliance with any requirements that are subject to this chapter.

43033. This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 967

An act to add Sections 3060.7 and 14202.2 to the Penal Code, relating to parole.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 3060.7 is added to the Penal Code, to read:

3060.7. (a) Notwithstanding any other law, the parole authority shall notify any person released on parole who has been classified by the Department of Corrections as included within the highest control or risk classification that he or she shall be required to report to his or her assigned parole officer within two days of release from the state prison.

This section shall not prohibit the parole authority from requiring any person released on parole to report to his or her assigned parole officer within a time period that is less than two days from the time of release.

(b) The parole authority, within 24 hours of a parolee's failure to report as required by this section, shall issue a written order suspending the parole of that parolee, pending a hearing before the parole authority, and shall issue a warrant for the parolee's arrest.

(c) Upon the issuance of an arrest warrant for a parolee who has been classified within the highest control or risk classification, the assigned parole officer shall continue to carry the parolee on his or her regular caseload and shall continue to search for the parolee's whereabouts.

(d) With regard to any inmate subject to this section, the Department of Corrections shall release an inmate sentenced prior to the effective date of this section one or two days before his or her scheduled release date if the inmate's release date falls on the day before a holiday or weekend.

(e) With regard to any inmate subject to this section, the Department of Corrections shall release an inmate one or two days after his or her scheduled release date if the release date falls on the day before a holiday or weekend. This subdivision shall not apply to an inmate sentenced prior to the effective date of this section.

SEC. 2. Section 14202.2 is added to the Penal Code, to read:

14202.2. The Department of Justice, in conjunction with the Department of Corrections, shall update any supervised release file that is available to law enforcement on the California Law Enforcement Telecommunications System every 10 days to reflect

the most recent inmates paroled from facilities under the jurisdiction of the Department of Corrections.

CHAPTER 968

An act to add Section 7901.1 to the Public Utilities Code, relating to public utilities.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 7901.1 is added to the Public Utilities Code, to read:

7901.1. (a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.

(b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner.

(c) Nothing in this section shall add to or subtract from any existing authority with respect to the imposition of fees by municipalities.

CHAPTER 969

An act to amend Section 740.7 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 740.7 of the Public Utilities Code is amended to read:

740.7. (a) The commission may allow public utilities to provide utility service at whatever discounted rate is available in enterprise zones, to facilities located on all federal military bases that have closed or have been realigned since January 1, 1992, or are scheduled to be closed or realigned.

(b) For purposes of this section, "facilities" means businesses that the commission determines will continue in existence after closure of the military base, or new or expanded businesses that are

consistent with a reuse plan adopted by the appropriate local jurisdiction.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 970

An act to amend Sections 5090.12 and 5090.70 of the Public Resources Code, and to amend Sections 38225 and 38235 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 5090.12 of the Public Resources Code is amended to read:

5090.12. (a) The Secretary of the Resources Agency shall prepare and submit an environmental review on the implementation of this chapter to the Assembly Committee on Natural Resources, the Senate Committee on Natural Resources and Wildlife, and the Committee on Appropriations of each house on or before January 1, 1998, and every five years thereafter.

(b) The Legislature shall appropriate, from the Off-Highway Vehicle Trust Fund, created pursuant to Section 38225 of the Vehicle Code, an amount equal to the cost of preparing the review required by subdivision (a).

SEC. 2. Section 5090.70 of the Public Resources Code is amended to read:

5090.70. This chapter shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 3. Section 38225 of the Vehicle Code, as amended by Section 5 of Chapter 1004 of the Statutes of 1994, is amended to read:

38225. (a) A service fee of nine dollars ($9) shall be paid to the department for the issuance or renewal of identification of off-highway motor vehicles subject to identification, except as expressly exempted under this division.

(b) In addition to the service fee specified in subdivision (a), a special fee of six dollars ($6) shall be paid at the time of payment of the service fee for the issuance or renewal of an identification plate or device.

(c) All money transferred pursuant to Sections 8352.6 and 8352.7 of the Revenue and Taxation Code, all fees received by the department pursuant to subdivision (b), and all day use, overnight

use, or annual or biennial use fees for state vehicular recreation areas received by the Department of Parks and Recreation, shall be deposited in the Off-Highway Vehicle Trust Fund, which is hereby created. There shall be a separate reporting of special fee revenues by vehicle type, including four-wheeled vehicles, three-wheelers, motorcycles, and snowmobiles. All money shall be deposited in the fund, which is a trust fund, and, upon appropriation by the Legislature, shall be allocated by the Off-Highway Motor Vehicle Recreation Commission, as provided in this section. Money in the fund shall be administered by the commission, as trustee of the fund, and, subject to Section 5090.61 of the Public Resources Code, shall be allocated for those purposes set forth in Sections 38240 and 38240.1.

(d) Any money temporarily transferred by the Legislature from the Off-Highway Vehicle Trust Fund to the General Fund shall be reimbursed, without interest, by the Legislature within two fiscal years of the transfer.

(e) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date. Any unencumbered funds remaining in the Off-Highway Vehicle Trust Fund on January 1, 2003, shall be transferred to the General Fund.

SEC. 4. Section 38225 of the Vehicle Code, as amended by Section 7 of Chapter 964 of the Statutes of 1992, is amended to read:

38225. (a) A service fee of nine dollars ($9) shall be paid to the department for the issuance or renewal of identification of off-highway motor vehicles subject to identification, except as expressly exempted under this division.

(b) This section shall become operative on January 1, 2003.

SEC. 5. Section 38235 of the Vehicle Code is amended to read:

38235. All money collected by the department under Section 38230 shall be reported monthly to the Controller and at the same time be deposited in the State Treasury to the credit of the Off-Highway License Fee Fund, which is hereby created.

CHAPTER 971

An act to amend Sections 629, 629.02, 629.06, 629.08, 629.10, 629.32, 629.38, 629.44, and 629.48 of, and to add and repeal Chapter 1.4 (commencing with Section 629.50) of Title 15 of Part 1 of, the Penal Code, relating to wiretapping.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 629 of the Penal Code is amended to read:

629. Each application for an order authorizing the interception of a wire communication shall be made in writing upon the personal oath or affirmation of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney, to the presiding judge of the superior court or one other judge designated by the presiding judge. Each application shall include all of the following information:

(a) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application.

(b) The identity of the law enforcement agency that is to execute the order.

(c) A statement attesting to a review of the application and the circumstances in support thereof by the chief executive officer, or his or her designee, of the law enforcement agency making the application. This statement shall name the chief executive officer or the designee who effected this review.

(d) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including (1) details as to the particular offense that has been, is being, or is about to be committed, (2) the fact that conventional investigative techniques had been tried and were unsuccessful, or why they reasonably appear to be unlikely to succeed or to be too dangerous, (3) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (4) a particular description of the type of communication sought to be intercepted, and (5) the identity, if known, of the person committing the offense and whose communications are to be intercepted, or if that person's identity is not known, then the information relating to the person's identity that is known to the applicant.

(e) A statement of the period of time for which the interception is required to be maintained, and if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(f) A full and complete statement of the facts concerning all previous applications known, to the individual authorizing and to the individual making the application, to have been made to any judge of a state or federal court for authorization to intercept wire communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each of those applications.

(g) If the application is for the extension of an order, a statement setting forth the number of communications intercepted pursuant to the original order, and the results thus far obtained from the

interception, or a reasonable explanation of the failure to obtain results.

The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

SEC. 2. Section 629.02 of the Penal Code is amended to read:

629.02. Upon application made under Section 629, the judge may enter an ex parte order, as requested or modified, authorizing interception of wire communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probable cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(1) Importation, possession for sale, transportation, manufacture, or sale of controlled substances in violation of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with respect to a substance containing heroin, cocaine, PCP, methamphetamine, or their analogs where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.

(2) Murder, solicitation to commit murder, the commission of a crime involving the bombing of public or private property, or aggravated kidnapping, as specified in Section 209.

(3) Conspiracy to commit any of the above-mentioned crimes.

(b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception.

(c) There is probable cause to believe that the facilities from which, or the place where, the wire communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted, including, but not limited to, communications that may be utilized for locating or rescuing a kidnap victim.

(d) Normal investigative procedures have been tried and have failed or reasonably appear either to be unlikely to succeed if tried or to be too dangerous.

SEC. 3. Section 629.06 of the Penal Code is amended to read:

629.06. (a) Upon informal application by the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or a district attorney, the presiding judge of the superior court or one other judge designated by the presiding judge may grant oral approval for an interception, without an order, if he or she determines all of the following:

(1) There are grounds upon which an order could be issued under this chapter.

(2) There is probable cause to believe that an emergency situation exists with respect to the investigation of an offense enumerated in this chapter.

(3) There is probable cause to believe that a substantial danger to life or limb exists justifying the authorization for immediate interception of a private wire communication before an application for an order could with due diligence be submitted and acted upon.

(b) Approval for an interception under this section shall be conditioned upon filing with the judge, within 48 hours of the oral approval, a written application for an order which, if granted consistent with this chapter, shall also recite the oral approval under this subdivision and be retroactive to the time of the oral approval.

SEC. 4. Section 629.08 of the Penal Code is amended to read:

629.08. No order entered under this chapter shall authorize the interception of any wire communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with Section 629 and upon the court making findings required by Section 629.02. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event any longer than 30 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and shall terminate upon attainment of the authorized objective, or in any event at the time expiration of the term designated in the order or any extensions. In the event the intercepted communication is in a foreign language, an interpreter of that foreign language may assist peace officers in executing the authorization provided in this chapter, provided that the interpreter has the same training as any other intercepter authorized under this chapter and provided that the interception shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter.

SEC. 5. Section 629.10 of the Penal Code is amended to read:

629.10. Whenever an order authorizing an interception is entered, the order shall require reports in writing or otherwise to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective, or a satisfactory explanation for its lack, and the need for continued interception. If the judge finds that such progress has not been made, that the explanation for its lack is not satisfactory, or that no need exists for continued interception, he or she shall order that the interception immediately terminate. The reports shall be made at the intervals that the judge may require, but not less than one for

each period of 72 hours and shall be made by any reasonable and reliable means, as determined by the judge.

SEC. 6. Section 629.32 of the Penal Code is amended to read:

629.32. (a) If a peace officer, while engaged in intercepting wire communications in the manner authorized by this chapter, intercepts wire communications relating to crimes other than those specified in the order of authorization, but which are enumerated in subdivision (a) of Section 629.02, (1) the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in Sections 629.24 and 629.26 and (2) the contents and any evidence derived therefrom may be used under Section 629.28 when authorized by a judge if the judge finds upon subsequent application, that the contents were otherwise intercepted in accordance with the provisions of this chapter. The application shall be made as soon as practicable.

(b) If a peace officer, while engaged in intercepting wire communications in the manner authorized by this chapter, intercepts wire communications relating to crimes other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may not be disclosed or used as provided in Sections 629.24 and 629.26, except to prevent the commission of a public offense. The contents and any evidence derived therefrom may not be used under Section 629.28, except where the evidence was obtained through an independent source or inevitably would have been discovered, and the use is authorized by a judge who finds that the contents were intercepted in accordance with this chapter.

(c) The use of the contents of an intercepted wire communication relating to crimes other than that specified in the order of authorization to obtain a search or arrest warrant entitles the person named in the warrant to notice of the intercepted wire communication and a copy of the contents thereof which were used to obtain the warrant.

SEC. 7. Section 629.38 of the Penal Code is amended to read:

629.38. Nothing in Section 631, 632, 632.5, 632.6, or 632.7 shall be construed as prohibiting any peace officer from intercepting any wire communication pursuant to an order issued in accordance with the provisions of this chapter. Nothing in Section 631, 632, 632.5, 632.6, or 632.7 shall be construed as rendering inadmissible in any criminal proceeding in any court or before any grand jury any evidence obtained by means of an order issued in accordance with the provisions of this chapter. Nothing in Section 637 shall be construed as prohibiting the disclosure of the contents of any wire communication obtained by any means authorized by this chapter, if the disclosure is authorized by this chapter. Nothing in this chapter shall apply to any conduct authorized by Section 633.

SEC. 8. Section 629.44 of the Penal Code is amended to read:

629.44. (a) The Commission on Peace Officer Standards and Training, in consultation with the Attorney General, shall establish a course of training in the legal, practical, and technical aspects of the interception of private wire communications and related investigative techniques.

(b) The Attorney General shall set minimum standards for certification and periodic recertification of the following persons as eligible to apply for orders authorizing the interception of private wire communications, to conduct the interceptions, and to use the communications or evidence derived from them in official proceedings:

(1) Investigative or law enforcement officers.

(2) Other persons, when necessary, to provide linguistic interpretation who are designated by the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or the district attorney and are supervised by an investigative or law enforcement officer.

(c) The Commission on Peace Officer Standards and Training may charge a reasonable enrollment fee for those students who are employed by an agency not eligible for reimbursement by the commission to offset the costs of the training. The Attorney General may charge a reasonable fee to offset the cost of certification.

SEC. 9. Section 629.48 of the Penal Code is amended to read:

629.48. (a) This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed.

(b) The operation of this chapter shall be suspended from January 1, 1996, to December 31, 1997, during which period the provisions of Chapter 1.4 (commencing with Section 629.50) shall instead be operative.

(c) The operation of this chapter shall resume on January 1, 1998, subject to subdivision (a), and as of that date Chapter 1.4 (commencing with Section 629.50) is repealed.

SEC. 10. Chapter 1.4 (commencing with Section 629.50) is added to Title 15 of Part 1 of the Penal Code, to read:

CHAPTER 1.4. INTERCEPTION OF WIRE, ELECTRONIC DIGITAL PAGER, OR ELECTRONIC CELLULAR TELEPHONE COMMUNICATIONS

629.50. Each application for an order authorizing the interception of a wire, electronic digital pager, or electronic cellular telephone communication shall be made in writing upon the personal oath or affirmation of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney, to the presiding judge of the superior court or one other judge designated by the presiding judge. Each application shall include all of the following information:

(a) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application.

(b) The identity of the law enforcement agency that is to execute the order.

(c) A statement attesting to a review of the application and the circumstances in support thereof by the chief executive officer, or his or her designee, of the law enforcement agency making the application. This statement shall name the chief executive officer or the designee who effected this review.

(d) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including (1) details as to the particular offense that has been, is being, or is about to be committed, (2) the fact that conventional investigative techniques had been tried and were unsuccessful, or why they reasonably appear to be unlikely to succeed or to be too dangerous, (3) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (4) a particular description of the type of communication sought to be intercepted, and (5) the identity, if known, of the person committing the offense and whose communications are to be intercepted, or if that person's identity is not known, then the information relating to the person's identity that is known to the applicant.

(e) A statement of the period of time for which the interception is required to be maintained, and if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(f) A full and complete statement of the facts concerning all previous applications known, to the individual authorizing and to the individual making the application, to have been made to any judge of a state or federal court for authorization to intercept wire, electronic digital pager, or electronic cellular telephone communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each of those applications.

(g) If the application is for the extension of an order, a statement setting forth the number of communications intercepted pursuant to the original order, and the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

629.51. For the purposes of this chapter, the following terms have the following meanings:

(a) "Electronic digital pager communication" means any tone or digital display or tone and voice pager communication.

(b) "Electronic cellular telephone communication" means any cellular or cordless radio telephone communication.

629.52. Upon application made under Section 629.50, the judge may enter an ex parte order, as requested or modified, authorizing interception of wire, electronic digital pager, or electronic cellular telephone communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probable cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(1) Importation, possession for sale, transportation, manufacture, or sale of controlled substances in violation of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with respect to a substance containing heroin, cocaine, PCP, methamphetamine, or their analogs where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.

(2) Murder, solicitation to commit murder, the commission of a crime involving the bombing of public or private property, or aggravated kidnapping, as specified in Section 209.

(3) Conspiracy to commit any of the above-mentioned crimes.

(b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception, including, but not limited to, communications that may be utilized for locating or rescuing a kidnap victim.

(c) There is probable cause to believe that the facilities from which, or the place where, the wire, electronic digital pager, or electronic cellular telephone communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

(d) Normal investigative procedures have been tried and have failed or reasonably appear either to be unlikely to succeed if tried or to be too dangerous.

629.54. Each order authorizing the interception of any wire, electronic digital pager, or electronic cellular telephone communication shall specify all of the following:

(a) The identity, if known, of the person whose communications are to be intercepted, or if the identity is not known, then that information relating to the person's identity known to the applicant.

(b) The nature and location of the communication facilities as to which, or the place where, authority to intercept is granted.

(c) A particular description of the type of communication sought to be intercepted, and a statement of the illegal activities to which it relates.

(d) The identity of the agency authorized to intercept the communications and of the person making the application.

(e) The period of time during which the interception is authorized including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

629.56. (a) Upon informal application by the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or a district attorney, the presiding judge of the superior court or one other judge designated by the presiding judge may grant oral approval for an interception, without an order, if he or she determines all of the following:

(1) There are grounds upon which an order could be issued under this chapter.

(2) There is probable cause to believe that an emergency situation exists with respect to the investigation of an offense enumerated in this chapter.

(3) There is probable cause to believe that a substantial danger to life or limb exists justifying the authorization for immediate interception of a private wire, electronic digital pager, or electronic cellular telephone communication before an application for an order could with due diligence be submitted and acted upon.

(b) Approval for an interception under this section shall be conditioned upon filing with the judge, within 48 hours of the oral approval, a written application for an order which, if granted consistent with this chapter, shall also recite the oral approval under this subdivision and be retroactive to the time of the oral approval.

629.58. No order entered under this chapter shall authorize the interception of any wire, electronic digital pager, or electronic cellular telephone communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with Section 629.50 and upon the court making findings required by Section 629.52. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event any longer than 30 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter, and shall terminate upon attainment of the authorized objective, or in any event at the time expiration of the term designated in the order or any extensions. In the event the intercepted communication is in a foreign language, an interpreter of that foreign language may assist peace officers in executing the authorization provided in this chapter, provided that the interpreter has the same training as any other intercepter authorized under this chapter and provided that

the interception shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter.

629.60. Whenever an order authorizing an interception is entered, the order shall require reports in writing or otherwise to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective, or a satisfactory explanation for its lack, and the need for continued interception. If the judge finds that progress has not been made, that the explanation for its lack is not satisfactory, or that no need exists for continued interception, he or she shall order that the interception immediately terminate. The reports shall be made at the intervals that the judge may require, but not less than one for each period of 72 hours, and shall be made by any reasonable and reliable means, as determined by the judge.

629.62. (a) The Attorney General shall prepare and submit an annual report to the Legislature, the Judicial Council, and the Director of the Administrative Office of the United States Court on interceptions conducted under the authority of this chapter during the preceding year. Information for this report shall be provided to the Attorney General by any prosecutorial agency seeking an order pursuant to this chapter.

(b) The report shall include all of the following data:

(1) The number of orders or extensions applied for.

(2) The kinds of orders or extensions applied for.

(3) The fact that the order or extension was granted as applied for, was modified, or was denied.

(4) The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

(5) The offense specified in the order or application, or extension of an order.

(6) The identity of the applying law enforcement officer and agency making the application and the person authorizing the application.

(7) The nature of the facilities from which or the place where communications were to be intercepted.

(8) A general description of the interceptions made under the order or extension, including (A) the approximate nature and frequency of incriminating communications intercepted, (B) the approximate nature and frequency of other communications intercepted, (C) the approximate number of persons whose communications were intercepted, and (D) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions.

(9) The number of arrests resulting from interceptions made under the order or extension, and the offenses for which arrests were made.

(10) The number of trials resulting from the interceptions.

(11) The number of motions to suppress made with respect to the interceptions, and the number granted or denied.

(12) The number of convictions resulting from the interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions.

(13) Except with regard to the initial report required by this section, the information required by paragraphs (8) to (12), inclusive, with respect to orders or extensions obtained in a preceding calendar year.

(14) Other data that the Legislature, the Judicial Council, or the Director of the Administrative Office shall require.

(c) The annual report shall be filed no later than April of each year, and shall also include a summary analysis of the data reported pursuant to subdivision (b). The Attorney General may issue regulations prescribing the content and form of the reports required to be filed pursuant to this section by any prosecutorial agency seeking an order to intercept wire, electronic digital pager, or electronic cellular telephone communications.

629.64. The contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or other comparable device. The recording of the contents of any wire or electronic cellular telephone communication pursuant to this chapter shall be done in a way that will protect the recording from editing or other alterations and ensure that the audiotape recording can be immediately verified as to its authenticity and originality and that any alteration can be immediately detected. In addition, the monitoring or recording device shall be of a type and shall be installed to preclude any interruption or monitoring of the interception by any unauthorized means. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings shall be made available to the judge issuing the order and sealed under his or her directions. Custody of the recordings shall be where the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of Sections 629.74 and 629.76 for investigations. The presence of the seal provided for by this section, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or electronic cellular telephone communication or evidence derived therefrom under Section 629.78.

629.66. Applications made and orders granted pursuant to this chapter shall be sealed by the judge. Custody of the applications and orders shall be where the judge orders. The applications and orders shall be disclosed only upon a showing of good cause before a judge and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

629.68. Within a reasonable time, but no later than 90 days, after the termination of the period of an order or extensions thereof, or after the filing of an application for an order of approval under Section 629.56 which has been denied, the issuing judge shall cause to be served upon persons named in the order or the application, and other known parties to intercepted communications, an inventory which shall include notice of all of the following:

(a) The fact of the entry of the order.

(b) The date of the entry and the period of authorized interception.

(c) The fact that during the period wire, electronic digital pager, or electronic cellular telephone communications were or were not intercepted.

The judge, upon filing of a motion, may, in his or her discretion, make available to the person or his or her counsel for inspection the portions of the intercepted communications, applications, and orders that the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge, the serving of the inventory required by this section may be postponed. The period of postponement shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted.

629.70. The contents of any intercepted wire, electronic digital pager, or electronic cellular telephone communication or evidence derived from it shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding, except a grand jury proceeding, unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a transcript of the contents of the interception and with a copy of the court order and accompanying application under which the interception was authorized. This 10-day period may be waived by the judge if he or she finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding, and that the party will not be prejudiced by the delay in receiving that information.

629.72. Any person in any trial, hearing, or proceeding, may move to suppress some or all of the contents of any intercepted wire, electronic digital pager, or electronic cellular telephone communications, or evidence derived therefrom, only on the basis that the contents or evidence were obtained in violation of the Fourth Amendment of the United States Constitution or of this chapter. The motion shall be made, determined, and be subject to review in accordance with the procedures set forth in Section 1538.5.

629.74. The Attorney General, any Deputy Attorney General, district attorney, or deputy district attorney, or any peace officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic digital pager, or electronic cellular telephone communication, or evidence derived therefrom, may disclose the contents to one of the individuals

referred to in this section and to any investigative or law enforcement officer as defined in subdivision (7) of Section 2510 of Title 18 of the United States Code to the extent that the disclosure is permitted pursuant to Section 629.82 and is appropriate to the proper performance of the official duties of the individual making or receiving the disclosure. No other disclosure, except to a grand jury, of intercepted information is permitted prior to a public court hearing by any person regardless of how the person may have come into possession thereof.

629.76. The Attorney General, any Deputy Attorney General, district attorney, or deputy district attorney, or any peace officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic digital pager, or electronic cellular telephone communication, or evidence derived therefrom may use the contents or evidence to the extent the use is appropriate to the proper performance of his or her official duties and is permitted pursuant to Section 629.82.

629.78. Any person who has received, by any means authorized by this chapter, any information concerning a wire, electronic digital pager, or electronic cellular telephone communication, or evidence derived therefrom, intercepted in accordance with the provisions of this chapter, may, pursuant to Section 629.82, disclose the contents of that communication or derivative evidence while giving testimony under oath or affirmation in any criminal court proceeding or in any grand jury proceeding.

629.80. No otherwise privileged wire, electronic digital pager, or electronic cellular telephone communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character. When a peace officer, while engaged in intercepting wire, electronic digital pager, or electronic cellular telephone communications in the manner authorized by this chapter, intercepts wire, electronic digital pager, or electronic cellular telephone communications that are of a privileged nature he or she shall immediately cease the interception for at least two minutes. After a period of at least two minutes, interception may be resumed for up to 30 seconds during which time the officer shall determine if the nature of the communications is still privileged. If still of a privileged nature, the officer shall again cease interception for at least two minutes, after which the officer may again resume interception for up to 30 seconds to redetermine the nature of the communication. The officer shall continue to go on-line and off-line in this manner until the time that the communication is no longer privileged or the communication ends. The recording device shall be metered so as to authenticate upon review that interruptions occurred as set forth in this chapter.

629.82. (a) If a peace officer, while engaged in intercepting wire, electronic digital pager, or electronic cellular telephone communications in the manner authorized by this chapter,

intercepts wire, electronic digital pager, or electronic cellular telephone communications relating to crimes other than those specified in the order of authorization, but which are enumerated in subdivision (a) of Section 629.52, (1) the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in Sections 629.74 and 629.76 and (2) the contents and any evidence derived therefrom may be used under Section 629.78 when authorized by a judge if the judge finds upon subsequent application, that the contents were otherwise intercepted in accordance with the provisions of this chapter. The application shall be made as soon as practicable.

(b) If a peace officer, while engaged in intercepting wire, electronic digital pager, or electronic cellular telephone communications in the manner authorized by this chapter, intercepts wire, electronic digital pager, or electronic cellular telephone communications relating to crimes other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may not be disclosed or used as provided in Sections 629.74 and 629.76, except to prevent the commission of a public offense. The contents and any evidence derived therefrom may not be used under Section 629.78, except where the evidence was obtained through an independent source or inevitably would have been discovered, and the use is authorized by a judge who finds that the contents were intercepted in accordance with this chapter.

(c) The use of the contents of an intercepted wire, electronic digital pager, or electronic cellular telephone communication relating to crimes other than that specified in the order of authorization to obtain a search or arrest warrant entitles the person named in the warrant to notice of the intercepted wire, electronic digital pager, or electronic cellular telephone communication and a copy of the contents thereof which were used to obtain the warrant.

629.84. Any violation of this chapter is punishable by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison, or by both such fine and imprisonment in the county jail or in the state prison.

629.86. Any person whose wire, electronic digital pager, or electronic cellular telephone communication is intercepted, disclosed, or used in violation of this chapter shall have the following remedies:

(a) Have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use, the communications.

(b) Be entitled to recover, in that action, all of the following:

(1) Actual damages but not less than liquidated damages computed at the rate of one hundred dollars ($100) a day for each day of violation or one thousand dollars ($1,000), whichever is greater.

(2) Punitive damages.

(3) Reasonable attorney's fees and other litigation costs reasonably incurred.

A good faith reliance on a court order is a complete defense to any civil or criminal action brought under this chapter, or under Chapter 1.5 (commencing with Section 630) or any other law.

629.88. Nothing in Section 631, 632.5, 632.6, or 632.7 shall be construed as prohibiting any peace officer from intercepting any wire, electronic digital pager, or electronic cellular telephone communication pursuant to an order issued in accordance with the provisions of this chapter. Nothing in Section 631, 632.5, 632.6, or 632.7 shall be construed as rendering inadmissible in any criminal proceeding in any court or before any grand jury any evidence obtained by means of an order issued in accordance with the provisions of this chapter. Nothing in Section 637 shall be construed as prohibiting the disclosure of the contents of any wire, electronic digital pager, or electronic cellular telephone communication obtained by any means authorized by this chapter, if the disclosure is authorized by this chapter. Nothing in this chapter shall apply to any conduct authorized by Section 633.

629.89. No order issued pursuant to this chapter shall either directly or indirectly authorize covert entry into or upon the premises of a residential dwelling, hotel room, or motel room for installation or removal of any interception device or for any other purpose. Notwithstanding that this entry is otherwise prohibited by any other section or code, this chapter expressly prohibits covert entry of a residential dwelling, hotel room, or motel room to facilitate an order to intercept wire, electronic digital pager, or electronic cellular telephone communications.

629.90. An order authorizing the interception of a wire, electronic digital pager, or electronic cellular telephone communication shall direct, upon request of the applicant, that a public utility engaged in the business of providing communications services and facilities, a landlord, custodian, or any other person furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services which the public utility, landlord, custodian, or other person is providing the person whose communications are to be intercepted. Any such public utility, landlord, custodian, or other person furnishing facilities or technical assistance shall be fully compensated by the applicant for the reasonable costs of furnishing the facilities and technical assistance.

629.91. A good faith reliance on a court order issued in accordance with this chapter by any public utility, landlord, custodian, or any other person furnishing information, facilities, and technical assistance as directed by the order is a complete defense to any civil

or criminal action brought under this chapter, Chapter 1.5 (commencing with Section 630), or any other law.

629.92. Notwithstanding any other provision of law, any court to which an application is made in accordance with this chapter may take any evidence, make any finding, or issue any order required to conform the proceedings or the issuance of any order of authorization or approval to the provisions of the Constitution of the United States, any law of the United States, or this chapter.

629.94. (a) The Commission on Peace Officer Standards and Training, in consultation with the Attorney General, shall establish a course of training in the legal, practical, and technical aspects of the interception of private wire, electronic digital pager, or electronic cellular telephone communications and related investigative techniques.

(b) The Attorney General shall set minimum standards for certification and periodic recertification of the following persons as eligible to apply for orders authorizing the interception of private wire, electronic digital pager, or electronic cellular telephone communications, to conduct the interceptions, and to use the communications or evidence derived from them in official proceedings:

(1) Investigative or law enforcement officers.

(2) Other persons, when necessary, to provide linguistic interpretation who are designated by the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or the district attorney and are supervised by an investigative or law enforcement officer.

(c) The Commission on Peace Officer Standards and Training may charge a reasonable enrollment fee for those students who are employed by an agency not eligible for reimbursement by the commission to offset the costs of the training. The Attorney General may charge a reasonable fee to offset the cost of certification.

629.96. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of its provisions to other persons or circumstances, shall not be affected thereby.

629.98. This chapter shall remain in effect only until January 1, 1998, and as of that date is repealed.

CHAPTER 972

An act to amend Sections 1981, 1983.5, 42238.18, 48900, 48900.6, 48915, 48915.2, 48915.5, 48916, 48918, and 49079 of, to add Section 1982.3 to, to add Article 3.5 (commencing with Section 32225) to Chapter 2 of Part 19 of, and to repeal Section 48915.7 of, the Education Code, relating to pupils.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 1981 of the Education Code is amended to read:

1981. The county board of education may enroll in community schools any of the following:

(a) Pupils who have been expelled from a school district for any reason other than those specified in subdivision (a) or (c) of Section 48915.

(b) Pupils who have been referred to county community schools by a school district as a result of the recommendation by a school attendance review board or pupils whose school districts of attendance have, at the request of the pupil's parent or guardian, approved the pupil's enrollment in a county community school.

(c) Pupils who are probation-referred pursuant to Sections 300, 601, 602, and 654 of the Welfare and Institutions Code, pupils who are on probation or parole and who are not in attendance in any school, or pupils who are expelled for any of the reasons specified in subdivision (a) or (c) of Section 48915.

(d) Homeless children.

SEC. 2. Section 1982.3 is added to the Education Code, to read:

1982.3. Any amounts received by a county superintendent of schools for revenue limit purposes that are derived from the average daily attendance generated by pupils enrolled in a community school shall be expended only for community school purposes.

SEC. 3. Section 1983.5 of the Education Code is amended to read:

1983.5. (a) Notwithstanding any other provision of law, community school apportionments may be claimed for pupils enrolled in kindergarten and grades 1 to 6, inclusive, who have been expelled from a school district, and for pupils in grades 7 to 12, inclusive.

(b) Notwithstanding any other provision of law, apportionments claimed by a county office of education for units of average daily attendance for pupils enrolled pursuant to subdivision (c) of Section 1981 in excess of the number claimed by that county office in the 1991–92 fiscal year shall be funded at the statewide average revenue limit per unit of average daily attendance for that category of enrollment.

SEC. 4. Article 3.5 (commencing with Section 32225) is added to Chapter 2 of Part 19 of the Education Code, to read:

Article 3.5. Communication Devices in Classrooms

32225. It is the intent of the Legislature that if federal funding becomes available for the purposes of the article, the governing

board of each school district and each county superintendent of schools equip schools with two-way communication devices to be installed in each classroom used by pupils in kindergarten and grades 1 to 12, inclusive, that is not currently so equipped. For the purposes of this section, classroom includes portable classrooms. The communication devices shall be for the use of teachers or other employees or agents of the school in the event of a medical emergency or violent crime in the classroom.

32226. As used in this article, "two-way communication devices" include, but are not necessarily limited to, telephones, intercoms, walkie-talkies, or portable radios.

SEC. 5. Section 42238.18 of the Education Code is amended to read:

42238.18. (a) Notwithstanding any other provision of law, only those pupils enrolled in county office of education programs while detained in a juvenile hall, juvenile home, day center, juvenile ranch, juvenile camp, or regional youth educational facility established pursuant to Article 14 (commencing with Section 850), Article 15 (commencing with Section 880), and Article 24.5 (commencing with Section 894) of Chapter 2 of Division 2 of the Welfare and Institutions Code shall be counted as juvenile court school pupils. For purposes of apportionments, those pupils in any group home housing 25 or more children placed pursuant to Sections 362, 727, and 730 of the Welfare and Institutions Code or in any group home housing 25 or more children and operating one or more additional sites under a central administration for children placed pursuant to Section 362, 727, or 730 of the Welfare and Institutions Code shall be reported as county group home and institutions pupils to the Superintendent of Public Instruction and shall be counted as juvenile court school pupils for purposes of apportionments.

(b) Notwithstanding any other provision of law, any county superintendent of schools operating juvenile court schools, county group home and institutions schools, or community schools, or any combination of these schools shall maintain an account in their general fund to be known as the juvenile court and community school account, and shall deposit all funds derived from the operation of juvenile court, county group home and institutions schools, and community schools into that account. Expenditures from the juvenile court and community school account shall be limited to the following:

(1) Those expenditures defined as direct costs of instructional programs by the California State School Accounting Manual.

(2) Expenditures that are defined as documented direct support costs by the California State School Accounting Manual, however, costs charged for probation officers shall be limited to not more than the number of full-time equivalent probation officers paid for by the county office of education during the 1988–89 fiscal year.

(3) Expenditures that are defined as allocated direct support costs by the California State School Accounting Manual.

(4) Other expenditures for support and indirect charges. However, these charges may not exceed 10 percent of the sum of the expenditures in paragraphs (1), (2), and (3).

Expenditures that represent contract payments to other agencies for the operation of juvenile court and community school programs shall be included in the juvenile court and community school account and the contract costs distributed to the cost categories defined in paragraphs (1), (2), (3), and (4). At the end of any given school year the net ending balance in the juvenile court and community school account may be distributed to a reserved account for economic contingencies or to a reserved account for capital outlay, provided that the combined total transferred does not exceed 15 percent of the previous year's authorized expenditures as specified above and also provided that funds placed in the reserved accounts shall only be expended for juvenile court, county group home and institutions, or community school programs. The net ending balance, except for those funds placed in a capital outlay fund, shall not exceed the greater of 15 percent of the previous year's expenditures or twenty-five thousand dollars ($25,000). A county may accumulate over a period of two or more given school years a net ending balance in the capital outlay reserved account of more than 15 percent of the previous fiscal year's expenditures under provisions of a resolution of the governing board. Funds in the capital outlay reserve are to be used for capital outlay only. The Superintendent of Public Instruction shall require an annual certification by county superintendents of schools beginning in the 1989–90 fiscal year that juvenile court, county group home and institutions, and community school funds have been expended as provided in this section and shall withhold from the subsequent year's apportionment an amount equal to any ending balance in the juvenile court and community school account in excess of the transfers to reserves for economic contingencies and capital outlay as described in this section.

(c) Notwithstanding any other provision of law, only pupils, except those permitted pursuant to subdivisions (a), (b), and (d) of Section 1981, who are referred by the county probation department under Section 601 or 654 of the Welfare and Institutions Code, after an individualized review and certification of the appropriateness of enrollment in the county group home and institution's school or county community school, shall be enrolled and eligible for apportionments in county community schools. The individualized review shall include representatives of the court, the county department of education, the county probation department, and either the school district of residence or, in cases in which the pupil resides in a group home or institution, the school district in which the group home or institution is located, and, in each case, the school district representative shall agree to the appropriateness of the proposed placement and pupils so placed shall have a probation officer assigned to their case.

SEC. 6. Section 48900 of the Education Code is amended to read:

48900. A pupil may not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has:

(a) Caused, attempted to cause, or threatened to cause physical injury to another person.

(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stolen or attempted to steal school property or private property.

(h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(*l*) Knowingly received stolen school property or private property.

(m) Possessed an imitation firearm. As used in this section, "imitation firearm" means a replica of a firearm that is so

substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

A pupil may not be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school sponsored activity.

It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.

SEC. 7. Section 48900.6 of the Education Code is amended to read:

48900.6. Instead of disciplinary action prescribed by this article, the principal of a school, the principal's designee, the superintendent of schools, or the governing board may require a pupil to perform community service on school grounds during nonschool hours. For the purposes of this section "community service" may include, but is not limited to, work performed on school grounds in the areas of outdoor beautification, campus betterment, and teacher or peer assistance programs. This section does not apply if suspension or expulsion is required by this article.

SEC. 8. Section 48915 of the Education Code is amended to read:

48915. (a) Except as provided in subdivisions (c) and (e), the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance:

(1) Causing serious physical injury to another person, except in self-defense.

(2) Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil.

(3) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

(4) Robbery or extortion.

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed

pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel shall be based on a finding of one or both of the following:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

(1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.

(2) Brandishing a knife at another person.

(3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions:

(1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.

(2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.

(3) Is not housed at the schoolsite attended by the pupil at the time of suspension.

(e) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil, at school or at a school activity off of school grounds violated subdivision (f), (g), (h), (i), (j), (k), (*l*), or (m) of Section 48900, or Section 48900.2 or 48900.3, and either of the following:

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(f) The governing board shall refer a pupil who has been expelled pursuant to subdivision (b) or (e) to a program of study that meets

all of the conditions specified in subdivision (d). Notwithstanding this subdivision, with respect to a pupil expelled pursuant to subdivision (e), if the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior, or senior high school, or an elementary school, and that the only option for placement is at another comprehensive middle, junior, or senior high school, or another elementary school, the pupil may be referred to a program of study that is provided at a comprehensive middle, junior, or senior high school, or at an elementary school.

(g) As used in this section, "knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than $3^1/_2$ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

SEC. 9. Section 48915.2 of the Education Code is amended to read:

48915.2. (a) A pupil expelled from school for any of the acts listed in subdivision (a) or (c) of Section 48915 shall not be permitted to enroll in any other school or school district during the period of expulsion unless it is a county community school pursuant to subdivision (c) of Section 1981, a juvenile court school, as described in Section 48645.1, or a program of study pursuant to subdivision (d) of Section 48915.

(b) After a determination has been made, pursuant to a hearing under Section 48918, that an individual expelled from another school district for any act described in subdivision (a) or (c) of Section 48915 does not pose a danger to either the pupils or employees of the school district, the governing board of a school district may permit the individual to enroll in the school district after the term of expulsion, subject to one of the following conditions:

(1) He or she has established legal residence in the school district, pursuant to Section 48200.

(2) He or she is enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts pursuant to Chapter 5 (commencing with Section 46600) of Part 26 or pursuant to Article 1.5 (commencing with Section 48209) of Chapter 2 of Part 27.

SEC. 10. Section 48915.5 of the Education Code is amended to read:

48915.5. (a) In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special education program, the governing board may order the pupil expelled pursuant to subdivision (b) or (d) of Section 48915 only if all of the following conditions are met:

(1) An individualized education program team meeting is held and conducted pursuant to Article 3 (commencing with Section 56340) of Chapter 2 of Part 30.

(2) The team determines that the misconduct was not caused by, or was not a direct manifestation of, the pupil's identified disability.

(3) The team determines that the pupil had been appropriately placed at the time the misconduct occurred.

The term "pupil with previously identified exceptional needs," as used in this section, means a pupil who meets the requirements of Section 56026 and who, at the time the alleged misconduct occurred, was enrolled in a special education program, including enrollment in nonpublic schools pursuant to Section 56365 and state special schools.

(b) For purposes of this section, all applicable procedural safeguards prescribed by federal and state law and regulations apply to proceedings to expel pupils with previously identified exceptional needs, except that, notwithstanding Section 56321, subdivision (e) of Section 56506, or any other provision of law, parental consent is not required prior to conducting a preexpulsion educational assessment pursuant to subdivision (e), or as a condition of the final decision of the local board to expel.

(c) Each local educational agency, pursuant to the requirements of Section 56221, shall develop procedures and timelines governing expulsion procedures for individuals with exceptional needs.

(d) The parent of each pupil with previously identified exceptional needs has the right to participate in the individualized education program team meeting conducted pursuant to subdivision (a) preceding the commencement of expulsion proceedings, following the completion of a preexpulsion assessment pursuant to subdivision (e), through actual participation, representation, or a telephone conference call. The meeting shall be held at a time and place mutually convenient to the parent and local educational agency within the period, if any, of the pupil's preexpulsion suspension. A telephone conference call may be substituted for the meeting. Each parent shall be notified of his or her right to participate in the meeting at least 48 hours prior to the meeting. Unless a parent has requested a postponement, the meeting may be conducted without the parent's participation, if the notice required by this subdivision has been provided. The notice shall specify that the meeting may be held without the parent's participation, unless the parent requests a postponement for up to three additional schooldays pursuant to this subdivision. Each parent may request that the meeting be postponed for up to three additional schooldays. If a postponement has been granted, the local educational agency may extend any suspension of a pupil for the period of postponement if the pupil continues to pose an immediate threat to the safety of himself, herself, or others and the local educational agency notifies the parent that the suspension will be continued during the postponement. However, the suspension shall not be extended beyond 10 consecutive schooldays unless agreed to by the parent, or by a court order. If a parent who has received proper notice of the meeting refuses to consent to an extension beyond 10 consecutive

schooldays and chooses not to participate, the meeting may be conducted without the parent's participation.

(e) In determining whether a pupil should be expelled, the individualized education program team shall base its decision on the results of a preexpulsion educational assessment conducted in accordance with the guidelines of Section 104.35 of Title 34 of the Code of Federal Regulations, which shall include a review of the appropriateness of the pupil's placement at the time of the alleged misconduct, and a determination of the relationship, if any, between the pupil's behavior and his or her disability.

In addition to the preexpulsion educational assessment results, the individualized education program team shall also review and consider the pupil's health records and school discipline records. The parent, pursuant to Section 300.504 of Title 34 of the Code of Federal Regulations, is entitled to written notice of the local educational agency's intent to conduct a preexpulsion assessment. The parent shall make the pupil available for the assessment at a site designated by the local educational agency without delay. The parent's right to an independent assessment under Section 56329 applies despite the fact that the pupil has been referred for expulsion.

(f) If the individualized education program team determines that the alleged misconduct was not caused by, or a direct manifestation of, the pupil's disability, and if it is determined that the pupil was appropriately placed, the pupil shall be subject to the applicable disciplinary actions and procedures prescribed under this article.

(g) The parent of each pupil with previously identified exceptional needs has the right to a due process hearing conducted pursuant to Section 1415 of Title 20 of the United States Code if the parent disagrees with the decision of the individualized education program team made pursuant to subdivision (f), or if the parent disagrees with the decision to rely upon information obtained, or proposed to be obtained, pursuant to subdivision (e).

(h) No expulsion hearing shall be conducted for an individual with exceptional needs until all of the following have occurred:

(1) A preexpulsion assessment is conducted.

(2) The individualized education program team meets pursuant to subdivision (a).

(3) Due process hearings and appeals, if initiated pursuant to Section 1415 of Title 20 of the United States Code, are completed.

(i) Pursuant to subdivision (a) of Section 48918, the statutory times prescribed for expulsion proceedings for individuals with exceptional needs shall commence after the completion of paragraphs (1), (2), and (3) in subdivision (h).

(j) If an individual with exceptional needs is excluded from schoolbus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent.

SEC. 11. Section 48915.7 of the Education Code is repealed.

SEC. 12. Section 48916 of the Education Code is amended to read:

48916. An expulsion order remains in effect until the governing board, in the manner prescribed in this article, orders the readmission of a pupil. At the time an expulsion of a pupil for an act other than those listed in subdivision (c) of Section 48915 is ordered, the governing board shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil may apply for readmission to a school maintained by the district. A pupil expelled pursuant to subdivision (d) of Section 48915 may apply for readmission not earlier than the last day of the semester following the semester in which the expulsion occurred.

The governing board may recommend a plan of rehabilitation for the pupil, which may include, but not be limited to, periodic review as well as assessment at the time of application for readmission. The plan may also include recommendations for counseling, employment, community service, or other rehabilitative programs.

The governing board of each school district shall adopt rules and regulations establishing a procedure for the filing and processing of requests for readmission. Upon completion of the readmission process, the governing board shall not be required to readmit the pupil. A description of the procedure shall be made available to the pupil and the pupil's parent or guardian at the time the expulsion order is entered.

SEC. 13. Section 48918 of the Education Code is amended to read:

48918. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

(a) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall require that the pupil be entitled to at least one postponement of an expulsion hearing, which postponement shall be for a period of not more than 30 calendar days. Thereafter, any additional postponement may be granted at the discretion of the governing board.

Within 10 schooldays following the conclusion of the hearing, the governing board shall decide whether to expel the pupil, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district governing board does not meet on a weekly basis, the governing board shall decide whether to expel the pupil within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent, unless the pupil requests in writing that the decision be postponed.

If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include all of the following:

(1) The date and place of the hearing.

(2) A statement of the specific facts and charges upon which the proposed expulsion is based.

(3) A copy of the disciplinary rules of the district that relate to the alleged violation.

(4) Notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1.

(5) Notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or employ and be represented by counsel, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses.

(c) Notwithstanding Section 54593 of the Government Code and Section 35145, the governing board shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days prior to the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.

If the governing board or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations.

(d) In lieu of conducting an expulsion hearing itself, the governing board may contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207, for a hearing officer to conduct the hearing. The governing board also may appoint an impartial administrative panel of three or more certificated

persons, none of whom is a member of the board or employed on the staff of the school in which the pupil is enrolled. The hearing shall be conducted in accordance with all of the procedures established under this section.

(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent of schools or the superintendent's designee after consultation with school district personnel, including the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

(f) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board may order.

The decision of the governing board to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of the identity of a witness and the testimony of that witness at the hearing would subject the witness to an unreasonable risk of harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are

accustomed to rely in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

(i) Whether an expulsion hearing is conducted by the governing board or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian, and shall be accompanied by all of the following:

(1) Notice of the right to appeal the expulsion to the county board of education.

(2) Notice of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that district of the expulsion.

(3) A list of the education alternatives available to the pupil during the time of expulsion, so that the pupil's education is disrupted to the least possible extent.

(j) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions are a nonprivileged, disclosable public record.

The expulsion order and the causes therefor shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

SEC. 14. Section 49079 of the Education Code is amended to read:

49079. (a) A school district shall inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in, any of the acts described in any of the subdivisions, except subdivision (h), of Section 48900. The district shall provide the information to the teacher based upon any records that the district maintains in its ordinary course of business, or receives from a law enforcement agency, regarding a pupil described in this section.

(b) A school district, or school district officer or employee, is not civilly or criminally liable for providing information under this section unless it is proven that the information was false and that the district or district officer or employee knew that the information was false, or was made with a reckless disregard for the truth or falsity of the information provided.

(c) An officer or employee of a school district who knowingly fails to provide information about a pupil who has engaged in, or who is reasonably suspected to have engaged in, the acts referred to in subdivision (a), is guilty of a misdemeanor, which is punishable by confinement in the county jail for a period not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or both.

(d) For the 1994–95 school year, the information provided shall be from the previous two school years. For the 1996–97 school year and each school year thereafter, the information provided shall be from the previous three school years.

(e) Any information received by a teacher pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher.

SEC. 15. This act shall be implemented only to the extent that funding is made available by the Legislature during the 1995–96 fiscal year for the purposes of this act from a ten million dollar ($10,000,000) augmentation for the estimated half-year cost of the Governor's "zero tolerance policy", as included in the Governor's Budget.

SEC. 16. This bill shall only become operative if AB 49 is passed by the Legislature.

SEC. 17. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 973

An act to amend Section 48916 of the Education Code, relating to pupils.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 48916 of the Education Code is amended to read:

48916. An expulsion order shall remain in effect until the governing board may, in the manner prescribed in this article, order the readmission of a pupil. At the time an expulsion of a pupil is ordered for an act other than those described in subdivision (b) of Section 48915, the governing board shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil may apply for readmission to a school maintained by the district. For a pupil who has been expelled

pursuant to subdivision (b) of Section 48915, the governing board shall set a date of one year from the date the expulsion occurred, when the pupil may apply for readmission to a school maintained by the district, except that the governing board may set an earlier date when the pupil may apply for readmission on a case-by-case basis.

The governing board may recommend a plan of rehabilitation for the pupil, which may include, but not be limited to, periodic review as well as assessment at the time of application for readmission. The plan may also include recommendations for counseling, employment, community service, or other rehabilitative programs.

The governing board of each school district shall adopt rules and regulations establishing a procedure for the filing and processing of requests for readmission. Upon completion of the readmission process, the governing board shall not be required to readmit the pupil. A description of the procedure shall be made available to the pupil and the pupil's parent or guardian at the time the expulsion order is entered.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 974

An act to amend Sections 48915.2, 48916, and 48918 of, to add Sections 39141.12, 48916.1, and 48926 to, to add Article 3 (commencing with Section 48660) to Chapter 4 of Part 27 of, and to repeal Section 48915.7 of, the Education Code, relating to pupils, and making an appropriation therefor.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 39141.12 is added to the Education Code, to read:

39141.12. (a) If the governing board of a school district operates a program for expelled pupils, the governing board shall do one or more of the following:

(1) Utilize available school facilities that conform to the requirements of Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations.

(2) Apply for emergency portable classrooms pursuant to Chapter 25 (commencing with Section 17785) of Part 10.

(3) Enter into lease agreements for facilities, provided that the facilities are limited to a structure where a structural engineer has submitted a report that determines substantial structural hazards do not exist.

(b) Before entering into any lease pursuant to paragraph (3) of subdivision (a), the governing board of the school district shall certify to the State Allocation Board that all reasonable efforts have been made to locate the program in facilities that conform to the structural safety standards listed in paragraph (1) of subdivision (a).

(c) On or before September 1, 1996, and every three years thereafter, each school district shall report to the State Allocation Board on the facilities utilized for the operation of these programs and efforts to place programs in facilities that conform with the requirements of Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations.

SEC. 2. Article 3 (commencing with Section 48660) is added to Chapter 4 of Part 27 of the Education Code, to read:

Article 3. Community Day Schools

48660. The governing board of a school district may establish one or more community day schools for pupils in kindergarten or any of grades 1 to 12, inclusive, who meet one or more of the conditions described in subdivision (b) of Section 48662.

48660.1. It is the intent of the Legislature that school districts operating community day schools to the extent possible include the following program components:

(a) School district cooperation with the county office of education, law enforcement, probation, and human services agencies personnel who work with at-risk youth.

(b) Low pupil-teacher ratio.

(c) Individualized instruction and assessment.

(d) Maximum collaboration with school district support service resources, including, but not limited to, school counselors and psychologists, academic counselors, and pupil discipline personnel.

48661. If pupils are expelled pursuant to subdivision (b) or (d) of Section 48915 and are served in a community day school, that program shall not be situated on a comprehensive schoolsite, except that if a county superintendent of schools certifies that no alternative program of study is available at a site away from a comprehensive middle, junior or senior high school, or an elementary schoolsite, the pupil may be referred to a community day school that is provided at a comprehensive middle, junior or senior high school, or elementary school.

48662. (a) The governing board of a school district that establishes a community day school shall adopt policies that provide procedures for the involuntary transfer of pupils to a community day school.

(b) A pupil may be assigned to a community day school only if he or she meets one or more of the following conditions:

(1) The pupil is expelled for any reason.

(2) The pupil is probation referred pursuant to Sections 300 and 602 of the Welfare and Institutions Code.

(3) The pupil is referred to a community day school by a school attendance review board or other district level referral process if a district does not operate a school attendance review board.

(4) First priority for assignment to a community day school shall be given to a pupil expelled pursuant to subdivision (d) of Section 48915, second priority shall be given to pupils expelled for any other reasons, and third priority shall be given for placement to all other pupils pursuant to this section, unless there is an agreement that the county superintendent of schools shall serve any of these pupils.

48663. (a) The minimum schoolday for pupils enrolled in community day schools is 360 minutes of classroom instruction provided by a certificated employee of the district or of a consortium of school districts pursuant to Section 48916.1.

(b) A pupil enrolled in a community day school may not generate more than one day of community day school attendance credit in a schoolday for any purpose.

(c) For the purposes of calculating the additional funding provided to a school district pursuant to Section 48664, only community day school attendance shall be reported in clock hours. Attendance of less than five clock hours in a schoolday shall be disregarded for purposes of Section 48664. Five clock hours of attendance in one schoolday shall be deemed to be one-half day of attendance, for purposes of additional funding pursuant to Section 48664. Six clock hours or more of attendance in one schoolday shall be deemed to be one day of attendance, for purposes of additional funding pursuant to Section 48664.

(d) Independent study may not be utilized as a means of providing any part of the minimum instructional day offered pursuant to subdivision (a).

48664. (a) In addition to funds from all other sources, the Superintendent of Public Instruction shall apportion to each school district that operates a community day school one thousand five hundred dollars ($1,500) per year, for each unit of average daily attendance reported at the annual apportionment for pupil attendance at community day schools. Average daily attendance reported for this program shall not exceed 0.375 percent of a district's prior year P2 average daily attendance in an elementary school district, 0.5 percent of a district's prior year P2 average daily attendance in a unified school district, or 0.625 percent of a district's prior year P2 average daily attendance in a high school district. The Superintendent of Public Instruction may reallocate to any school district any unexpended balance of the appropriations made for the purposes of this subdivision for actual pupil attendance in excess of the percentage specified in this subdivision for the school district in an amount not to exceed one-half of that percentage. However, the average daily attendance generated by pupils expelled pursuant to subdivision (d) of Section 48915, shall not be subject to these percentage caps on average daily attendance.

(b) In calculating the average daily attendance for a community day school, the school district shall use a divisor of 180 even if the community day school has a school year in excess of 180 days.

(c) The Superintendent of Public Instruction shall apportion to each school district that operates a community day school a sum equal to one dollar and forty cents ($1.40) multiplied by the total of the number of hours each schoolday, up to a maximum of two hours daily, that each community day school pupil remains at the community day school under the supervision of a school district employee following completion of the full six-hour instructional day.

(d) It is the intent of the Legislature that districts enter into consortia, as feasible, for the purpose of providing community day school programs. Any school district with fewer than 2,501 units of average daily attendance may request a waiver for any fiscal year of the funding limitations defined in this section. The Superintendent of Public Instruction shall approve a waiver if he or she deems it necessary in order to permit the operation of a community day school of reasonably comparable quality to those offered in school district with 2,501 or more units of average daily attendance. In no event shall the amount allocated pursuant to a waiver exceed the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in kindergarten and grades 1 to 6, inclusive, or the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in grades 7 to 12, inclusive. The provisions of this act shall not apply to any school district that applied for a waiver within the funding limits established by this subdivision but was denied funding or not fully funded.

(e) The State Department of Education shall evaluate and report to the appropriate legislative policy committees and budget

committees on or before October 1, 1998, and for two years thereafter the following programmatic and fiscal issues:

(1) The number of expulsions statewide.

(2) The number of school districts operating community day schools.

(3) Status of the countywide plans as defined in Section 48926.

(4) An evaluation of the community day school average daily attendance funding percentage cap.

(5) Number of small school districts requesting and the number receiving a waiver under this section.

(6) The effect of hourly accounting under Section 48663 for purposes of receiving the additional funding under Section 48664.

(7) The number of pupils and average daily attendance served in community day programs, further identified as the number expelled pursuant to subdivision (d) of Section 48915, subdivision (b) of Section 48915, other expulsion criteria, or referred through a formal district process.

(8) Pupil outcome data and other data as required under Section 48916.1.

(9) Other programmatic or fiscal matters as determined by the State Department of Education.

(f) The additional funds provided in subdivisions (a) (c), and (d) shall only be allocated to the extent that funds are appropriated for this purpose in the annual Budget Act or other legislation, or both, except for pupils expelled pursuant to subdivision (d) of Section 48915. For pupils expelled pursuant to subdivision (d) of Section 48915, the funds apportioned under subdivision (a) are continuously appropriated from the General Fund to Section A of the State School Fund.

48666. Notwithstanding any other provision of law, the governing board of a school district maintaining a community day school may establish attendance policies for the community day school that permit the community day school to require pupils to attend school for up to seven days each week when this action is taken as part of a directed program designed to provide community day pupils with the skills and attitudes necessary for success when returned to a regular school environment.

SEC. 3. Section 48915.2 of the Education Code is amended to read:

48915.2. (a) A pupil expelled from school for any of the offenses listed in subdivision (a) or (c) of Section 48915, shall not be permitted to enroll in any other school or school district during the period of expulsion unless it is a county community school pursuant to subdivision (c) of Section 1981, or a juvenile court school, as described in Section 48645.1, or a community day school pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27.

(b) After a determination has been made, pursuant to a hearing under Section 48918, that an individual expelled from another school

district for any act described in subdivision (a) or (c) of Section 48915 does not pose a danger to either the pupils or employees of the school district, the governing board of a school district may permit the individual to enroll in the school district after the term of expulsion, subject to one of the following conditions:

(1) He or she has established legal residence in the school district, pursuant to Section 48200.

(2) He or she is enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

SEC. 4. Section 48915.7 of the Education Code is repealed.

SEC. 5. Section 48916 of the Education Code is amended to read:

48916. (a) An expulsion order shall remain in effect until the governing board, in the manner prescribed in this article, orders the readmission of a pupil. At the time an expulsion of a pupil is ordered for an act other than those described in subdivision (c) of Section 48915, the governing board shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district or to the school the pupil last attended. For a pupil who has been expelled pursuant to subdivision (c) of Section 48915, the governing board shall set a date of one year from the date the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district, except that the governing board may set an earlier date for readmission on a case-by-case basis.

(b) The governing board shall recommend a plan of rehabilitation for the pupil at the time of the expulsion order, which may include, but not be limited to, periodic review as well as assessment at the time of review for readmission. The plan may also include recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, or other rehabilitative programs.

(c) The governing board of each school district shall adopt rules and regulations establishing a procedure for the filing and processing of requests for readmission and the process for the required review of all expelled pupils for readmission. Upon completion of the readmission process, the governing board shall readmit the pupil, unless the governing board makes a finding that the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. A description of the procedure shall be made available to the pupil and the pupil's parent or guardian at the time the expulsion order is entered.

(d) If the governing board denies the readmission of an expelled pupil pursuant to subdivision (c), the governing board shall make a determination either to continue the placement of the pupil in the alternative educational program initially selected for the pupil

during the period of the expulsion order or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school.

(e) The governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying the pupil readmittance into the regular school district program. The written notice shall also include the determination of the educational program for the expelled pupil pursuant to subdivision (d). The expelled pupil shall enroll in that educational program unless the parent or guardian of the pupil elects to enroll the pupil in another school district.

SEC. 6. Section 48916.1 is added to the Education Code, to read:

48916.1. (a) At the time an expulsion of a pupil is ordered, the governing board of the school district shall ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion, but only to the extent funds are appropriated for this purpose in the annual Budget Act or other legislation, or both.

(b) Notwithstanding any other provision of law, any educational program provided pursuant to subdivision (a) may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools.

(c) Any educational program provided pursuant to subdivision (b) shall not be situated within or on the grounds of the school from which the pupil was expelled.

(d) If the pupil who is subject to the expulsion order was expelled from any of kindergarten or grades 1 to 6, inclusive, the educational program provided pursuant to subdivision (b) shall not be combined or merged with educational programs offered to pupils in any of grades 7 to 12, inclusive. The district or county program is the only program required to be provided to expelled pupils as determined by the governing board of the school district.

(e) If the pupil who is subject to the expulsion order was expelled from any of grades 7 to 12, inclusive, the school district or the county superintendent of schools may offer the pupil who is subject to the expulsion order independent study in order to satisfy the requirement of subdivision (a). In order to offer independent study to a pupil who is subject to an expulsion order and in addition to any other requirements set forth in Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 for independent study, the parent or guardian of the pupil and the pupil shall provide the written consent for placement in independent study. A school district or the county superintendent of schools shall notify the expelled pupil of the option of classroom instruction pursuant to paragraph (7) of subdivision (c) of Section 51747.

(f) (1) (A) The governing board of the school district shall maintain outcome data and report them upon request from the State Department of Education on those pupils who are expelled for any reason and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to this section. Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.

(B) Districts shall also maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.

(C) Districts shall also maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.

(2) If the county superintendent of schools operates an educational program pursuant to this section, the county superintendent of schools shall provide to the governing board of the school district outcome data as specified in subparagraph (A) of paragraph (1) and outcome data on pupils participating in independent study programs offered by the county office of education.

(g) If the county superintendent of schools is unable for any reason to serve the expelled pupils of a school district within the county, the governing board of that school district may enter into an agreement with a county superintendent of schools in another county to provide education services for the district's expelled pupils.

SEC. 7. Section 48918 of the Education Code is amended to read:

48918. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to the following:

(a) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays of the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall require that the pupil shall be entitled to at least one postponement for a period of not more than 30 calendar days of an expulsion hearing. Thereafter, any additional postponement may be granted at the discretion of the governing board.

A decision of the governing board whether to expel a pupil shall be made within 10 schooldays following the conclusion of the hearing, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district governing board does not meet on a weekly basis, the governing board shall make its decision about a pupil's expulsion within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent, unless the pupil requests in writing that the decision be postponed.

In the event that compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include: the date and place of the hearing; a statement of the specific facts and charges upon which the proposed expulsion is based; a copy of the disciplinary rules of the district which relate to the alleged violation; a notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1; and notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or employ and be represented by counsel, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses.

(c) Notwithstanding Section 54593 of the Government Code and Section 35145 of this code, the governing board shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days prior to the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining if the pupil should be expelled.

If the governing board or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil shall also be allowed to attend the closed deliberations.

(d) In lieu of conducting an expulsion hearing itself, the governing board may contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207 of this code, for a hearing officer to conduct the hearing. The governing board may also appoint an impartial administrative panel of three or more certificated persons, none of whom shall be members of the board or employed on the staff of the school in which the pupil is enrolled. The hearing shall be conducted in accordance with all of the procedures established under this section.

(e) Within three schooldays following the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil shall be immediately reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent of schools or the superintendent's designee after consultation with school district personnel, including the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

(f) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board may order.

The decision of the governing board to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of the identity of a witness and the testimony of that witness at the hearing would subject the witness to an unreasonable risk of harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations which are edited in such a manner as to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

(i) Whether an expulsion hearing is conducted by the governing board or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian, and shall be accompanied by notice of the right to appeal the expulsion to the county board of education, a notice of the education alternative placement to be provided to the pupil during the time of the expulsion, and of the obligation of the parent, guardian, or pupil pursuant to subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district to inform the new school district of the pupil's expulsion.

(j) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions shall be a nonprivileged, disclosable public record.

The expulsion order and the causes therefor shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

SEC. 7.5. Section 48918 of the Education Code is amended to read:

48918. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

(a) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall specify that the pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the governing board.

The decision of the governing board as to whether to expel a pupil shall be made within 10 schooldays after the conclusion of the hearing, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district governing board does not meet on a weekly basis, the governing board shall make its decision about a pupil's expulsion within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent, unless the pupil requests in writing that the decision be postponed.

In the event that compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include: the date and place of the hearing; a statement of the specific facts and charges upon which the proposed expulsion is based; a copy of the disciplinary rules of the district that relate to the alleged violation; a notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1; and notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or employ and be represented by counsel, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses.

(c) Notwithstanding Section 54593 of the Government Code and Section 35145, the governing board shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days prior to the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.

If the governing board or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations.

(d) In lieu of conducting an expulsion hearing itself, the governing board may contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207, for a hearing officer to conduct the hearing. The governing board may also appoint an impartial administrative panel of three or more certificated persons, none of whom are members of the board or employed on the staff of the school in which the pupil is enrolled. The hearing shall be conducted in accordance with all of the procedures established under this section.

(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent of schools or the superintendent's designee after consultation with school district personnel, including the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

(f) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board may order.

The decision of the governing board to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of the identity of a witness and the testimony of that witness at the hearing would subject the witness to an unreasonable risk of harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) Technical rules of evidence shall not apply to the hearing, except that relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

(i) (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with Section 11525 of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

(j) Whether an expulsion hearing is conducted by the governing board or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. Written notice of any decision to expel or to suspend the

enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian and shall be accompanied by notice of the right to appeal the expulsion to the county board of education, a notice of the education alternative placement to be provided to the pupil during the time of expulsion, and of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that district of the pupil's expulsion.

(k) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions shall be a nonprivileged, disclosable public record.

The expulsion order and the causes therefor shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

SEC. 8. Section 48926 is added to the Education Code, to read:

48926. Each county superintendent of schools in counties that operate community schools pursuant to Section 1980, in conjunction with superintendents of the school districts within the county, shall develop a plan for providing education services to all expelled pupils in that county. The plan shall be adopted by the governing board of each school district within the county and by the county board of education.

The plan shall enumerate existing educational alternatives for expelled pupils, identify gaps in educational services to expelled pupils, and strategies for filling those service gaps. The plan shall also identify alternative placements for pupils who are expelled and placed in district community day school programs, but who fail to meet the terms and conditions of their rehabilitation plan or who pose a danger to other district pupils, as determined by the governing board.

Each county superintendent of schools, in conjunction with the superintendents of the school districts, shall submit to the Superintendent of Public Instruction the county plan for providing educational services to all expelled pupils in the county no later than June 30, 1997, and shall submit a triennial update to the plan to the Superintendent of Public Instruction, including the outcome data pursuant to Section 48916.1, on June 30th thereafter.

SEC. 9. (a) This act shall not become operative until July 1, 1996, and shall only become operative if Senate Bill 966 of the 1995–96 Regular Session is enacted.

(b) With the exception of pupils expelled pursuant to subdivision (d) of Section 48915, the provisions of this act shall become operative only to the extent funds are appropriated for its purpose in the annual Budget Act, or other legislation, or both.

SEC. 10. Section 7.5 of this bill incorporates amendments to Section 48918 of the Education Code proposed by both this bill and

AB 618. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 48918 of the Education Code, and (3) this bill is enacted after AB 618, in which case Section 7 of this bill shall not become operative.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 975

An act to add Chapter 6 (commencing with Section 60800) to, and to add and repeal Chapter 5 (commencing with Section 60600) of, Part 33 of the Education Code, and to amend Section 11126 of the Government Code, relating to pupil testing, and making an appropriation therefor.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Chapter 5 (commencing with Section 60600) is added to Part 33 of the Education Code, to read:

CHAPTER 5. CALIFORNIA ASSESSMENT OF ACADEMIC ACHIEVEMENT

Article 1. General Provisions

60600. This chapter shall be known and may be cited as the Leroy Greene California Assessment of Academic Achievement Act.

60601. This chapter shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

60602. (a) It is the intent of the Legislature in enacting this chapter to provide a system of individual assessment of pupils that has, as its primary purpose, assisting pupils, their parents, and teachers to identify individual academic strengths and weaknesses, in order to improve teaching and learning. It is further the intent of

the Legislature in enacting this chapter to determine the effectiveness of school districts and schools, as measured by the extent to which pupils demonstrate knowledge of the fundamental academic skills, as well as the ability to apply those skills. In order to accomplish these goals, the Legislature finds and declares that California should adopt a coordinated and consolidated testing program to do all of the following:

(1) First and foremost, provide information on the academic status and progress of individual pupils to those pupils, their parents, and their teachers. This information should be designed to assist in the improvement of teaching and learning in California public classrooms. The Legislature recognizes that, in addition to statewide assessments that will occur as specified in this chapter, school districts will conduct additional ongoing pupil assessment and provide information regarding pupil performance based on those assessments on a regular basis to parents or guardians and schools.

(2) Develop and adopt a set of statewide academically rigorous content standards and performance standards in all major subject areas to serve as the basis for assessing the academic achievement of individual pupils, as well as for schools, school districts, and for the California education system as a whole. The performance standards shall be designed to lead to specific grade level benchmarks of academic achievement for each subject area tested within each grade level and shall be based on the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century.

(3) Ensure that all assessment procedures, items, instruments, and scoring systems are independently reviewed to ensure that they meet high standards of statistical reliability and validity and that they do not use procedures, items, instruments, or scoring practices that are racially, culturally, or gender biased.

(4) Provide information to pupils, parents or guardians, teachers, schools, and school districts on a timely basis so that the information can be used to further the development of the pupil and to improve the educational program.

(5) Develop assessments that are comparable to the National Assessment of Educational Progress and other national and international assessment efforts, so that California's local and state test results are reported in a manner that corresponds to the national test results. Test results should be reported in terms describing a pupil's academic performance in relation to the statewide academically rigorous content and performance standards adopted by the State Board of Education and in terms of employment skills possessed by the pupil, in addition to being reported as numerical or percentile scores.

(6) Assess pupils for a broad range of academic skills and knowledge including both basic academic skills and the ability of pupils to apply those skills.

(7) Include an appropriate balance of types of assessment instruments, including, but not limited to, multiple choice questions, short answer questions, and assessments of applied academic skills.

(8) Minimize the amount of instructional time devoted to assessments administered pursuant to this chapter.

(b) It is the intent of the Legislature, pursuant to this article, to begin a planning and implementation process to enable the Superintendent of Public Instruction to accomplish the goals set forth in this section as soon as feasible.

(c) It is further the intent of the Legislature that parents, classroom teachers, other educators, governing board members of school districts, and the public be involved, in an active and ongoing basis, in the design and implementation of the statewide pupil assessment program and the development of assessment instruments.

60603. As used in this chapter:

(a) "Achievement test" means any standardized test that measures the level of performance that a pupil has achieved in the core curriculum areas.

(b) "Assessment of applied academic skills" means a form of assessment that requires pupils to demonstrate their knowledge of, and ability to apply, academic knowledge and skills in order to solve problems and communicate. It may include, but is not limited to, writing an essay response to a question, conducting an experiment, or constructing a diagram or model. An assessment of applied academic skills may not include assessments of personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self esteem.

(c) "Basic academic skills" means those skills in subject areas, including, but not limited to, reading, spelling, written expression, and mathematics that provide the necessary foundation for mastery of more complex intellectual abilities, including the synthesis and application of knowledge.

(d) "Content standards" means the specific academic knowledge, skills, and abilities that all public schools in this state are expected to teach and all pupils expected to learn in each of the core curriculum areas, at each grade level tested.

(e) "Core curriculum areas" means the areas of reading, writing, mathematics, history-social science, and science.

(f) "Direct writing assessment" means an assessment of applied academic skills that requires pupils to use written expression to demonstrate writing skills, including writing mechanics, grammar, punctuation, and spelling.

(g) "End of course exam" means a comprehensive and challenging assessment of pupil achievement in a particular subject area or discipline such as the Golden State Exams.

(h) "Performance standards" are standards that define various levels of competence at each grade level in each of the curriculum

areas for which content standards are established. Performance standards gauge the degree to which a student has met the content standards and the degree to which a school or school district has met the content standards.

(i) "Publisher" means a commercial publisher or any other public or private entity, other than the State Department of Education, which is able to provide tests or test items that meet the requirements of this chapter.

(j) "Statewide pupil assessment program" means the systematic achievement testing of pupils in kindergarten and grades 1 to 12, inclusive, pursuant to the pupil testing incentive program under Article 4 and the system of assessments of basic academic skills and applied academic skills, administered to pupils in grade levels specified in subdivision (c) of Section 60605, required by this chapter in all schools within each school district by means of tests designated by the State Board of Education.

Article 2. Program Provisions

60604. (a) The Superintendent of Public Instruction shall design and implement, consistent with the timetable and plan required pursuant to subdivision (b), a statewide pupil assessment program to implement the testing requirements of this article in accordance with the objectives set forth in Section 60602. That program shall include all of the following:

(1) A method of producing valid, reliable, and comparable individual pupil scores in kindergarten and grades 1 to 12, inclusive, based on district-selected achievement tests that assess a broad range of basic academic skills pursuant to the pupil testing incentive program established by Article 4.

(2) A method of ensuring valid, reliable, and comparable school-level and district-level scores in kindergarten and grades 1 to 12, inclusive, that is based on achievement tests approved pursuant to subdivision (b) of Section 60605 and that, in the grade levels and subject areas specified in subdivision (c) of Section 60605, ensures valid, reliable and comparable school-level and district-level scores in the assessments administered pursuant to subdivision (c) of Section 60605.

(3) Statewide academically rigorous content and performance standards that reflect the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century. These skills shall not include personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self esteem.

(4) A statewide system that provides the results of both local and state testing in a manner that reflects the degree to which pupils are achieving the statewide academically rigorous content and performance standards adopted by the State Board of Education.

(5) The alignment of assessment with the knowledge and skills called for under the curriculum frameworks and with the statewide academically rigorous content and performance standards adopted by the State Board of Education.

(6) The active, ongoing involvement of parents, classroom teachers, other educators, governing board members of school districts, and the public in all phases of the design and implementation of the statewide pupil assessment program and the development of assessment instruments.

(b) The superintendent shall develop and annually update for the Legislature a five-year cost projection, implementation plan, and timetable for implementing the program described in subdivision (a).

(c) The elements to be included in the program described in subdivision (a) shall include, beginning in the 1995–96 school year, all of the following:

(1) The review and approval of achievement tests for use as part of the statewide pupil assessment program.

(2) The development of a methodology for reporting scores on approved tests according to a single, common scale that reflects statewide academically rigorous content and performance standards.

(3) Contracting with a publisher or publishers, for the development of assessments of applied academic skills designed to test pupils' knowledge of academic skills and abilities to apply that knowledge and those skills in order to solve problems and communicate, limited to the grade levels and subject areas specified in subdivision (c) of Section 60605.

(d) The Superintendent of Public Instruction shall immediately begin reviewing achievement tests for school district use, in order to determine their acceptability for use as part of the pupil testing incentive program established by Article 4. Based upon this review, the superintendent shall recommend that the State Board of Education approve for use by school districts as part of the statewide pupil assessment program any test that meets all of the following criteria:

(1) Is capable of producing valid, reliable individual pupil scores.

(2) Uses a reporting scale that permits measurement of changes in individual academic achievement from year to year and that allows comparison with other schools and school districts, including those that use other achievement tests approved by the State Board of Education. To the extent feasible, and to the extent it does not diminish the ability to make comparisons between California schools and school districts, the Superintendent of Public Instruction and the State Board of Education shall also consider the degree to which the reporting scale allows comparisons with other states and comparisons with national norms established within a reasonable period of time.

(3) Is aligned with the academically rigorous content and performance standards adopted by the State Board of Education.

Until the State Board of Education adopts academically rigorous content and performance standards, the Superintendent of Public Instruction shall recommend that the board conditionally approve for use as part of the statewide pupil assessment program any available achievement test that meets criteria (1) and (2) and is reasonably aligned with the state curriculum frameworks.

Nothing in this subdivision shall be construed as preventing the approval of any achievement test that contains assessments of applied academic skills, but that otherwise meets the criteria specified above.

(e) The Superintendent of Public Instruction shall provide each school district with guidelines for professional development that is designed to assist classroom teachers to use the results of the assessments administered pursuant to this chapter to modify instruction for the purpose of improving pupil learning. These guidelines shall be developed in consultation with classroom teachers.

(f) Development and implementation of a system for providing valid, reliable, and comparable individual pupil results in grades 2 to 10, inclusive, pursuant to the incentive program established in Article 4 (commencing with Section 60640) shall begin during the 1995–96 fiscal year.

(g) The Superintendent of Public Instruction shall make available prototype and sample versions of the statewide pupil assessment tests to each school district and to the public prior to administration of the tests. The superintendent and the State Board of Education shall consider comments and recommendations from school districts and the public in the development, adoption, and approval of subsequent assessment instruments.

(h) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) shall be returned to the school district in the same academic year in which the assessments were administered.

60605. (a) No later than January 1, 1998, the State Board of Education shall adopt statewide academically rigorous content and performance standards, pursuant to the recommendations of the Commission for the Establishment of Academic Content and Performance Standards, in all core curriculum areas to serve as the basis for assessing the academic achievement of individual pupils and of schools, school districts, and the California education system. The board may modify any proposed content standards or performance standards prior to adoption and may adopt content and performance standards in individual core curriculum areas as those standards are submitted to the board by the commission. The performance standards shall be established against specific grade level benchmarks of academic achievement for each subject area tested and shall be based on the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the

21st century. These skills shall not include personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self esteem. The standards adopted pursuant to this section shall be for the purpose of guiding state decisions regarding the development, adoption, and approval of assessment instruments pursuant to this chapter and shall not be construed to mandate any actions or activities by school districts. Prior to the adoption of academic content and performance standards, the board shall hold regional hearings for the purpose of giving parents and other members of the public the opportunity to comment on the proposed standards.

(b) The State Board of Education shall require the State Department of Education to submit and recommend to the State Board of Education for approval available tests of achievement that include all of the basic academic skills idenfified in subdivision (c) of Section 60603 in kindergarten and grades 1 to 12, inclusive.

(c) (1) The State Board of Education shall adopt tests that meet the objectives of Section 60602 and that yield valid, reliable estimates of school performance, school district performance, and statewide performance of pupils that, in grades 4, 5, 8, and 10, assess basic academic skills and incorporate the use of direct writing assessment and other assessments of applied academic skills.

(2) The State Board of Education shall annually require that each school district administer statewide tests pursuant to this subdivision to all pupils in grades 4, 5, 8, and 10. The core curriculum areas shall be addressed by those tests. Notwithstanding any other provision of law, the testing provided for under this subdivision shall address, in grade 4, only reading, written expression, and mathematics, and, in grade 5, only history/social science and science. Pupils in a given school shall be administered a portion of all subjects of the test that will be representative of all the test objectives, goals, and categories of items on the entire test in a manner that will produce results that are valid and reliable at the school and school district level. The State Department of Education may provide assistance to school districts in the implementation of the tests established pursuant to this subdivision.

(3) Nothing in this subdivision shall be construed to prevent the State Board of Education from developing or adopting tests that also contain assessments of basic academic skills.

(d) The State Board of Education shall adopt assessments pursuant to subdivision (c) that are aligned with the statewide content and performance standards adopted pursuant to subdivision (a). The State Board of Education shall not adopt an assessment pursuant to subdivision (c) for any core curriculum area until the statewide content and performance standards for that core curriculum area have been adopted by the board pursuant to subdivision (a). Nothing in this subdivision shall be construed to prevent the State Board of Education from awarding contracts

pursuant to subdivision (g) for the development and field testing of assessment instruments prior to adoption of statewide content and performance standards.

(e) After the adoption of the statewide content and performance standards, the State Board of Education shall review all tests approved or adopted pursuant to subdivision (b) for conformance with these statewide standards.

(f) The State Board of Education shall adopt regulations for the conduct and administration of the testing program.

(g) Following consideration of recommendations of the Superintendent of Public Instruction, the State Board of Education shall award contracts to develop instruments to be used for the purposes of subdivision (c), according to competitive bidding procedures.

(1) As part of this process, the board may convene an advisory panel composed of nationally recognized experts in pupil assessment. This panel, if convened, shall assist the board in the preparation of the request for proposals to develop instruments for use as assessments of applied academic skills and in the review and rating of proposals that are submitted. The panel shall also assist the board in determining methods of assuring that tests approved pursuant to subdivision (b) comply with paragraph (2) of subdivision (d) of Section 60604.

(2) Any contractor to whom a contract is awarded pursuant to this subdivision shall assure that parents, classroom teachers, administrators, school district governing board members, and the general public are actively involved in the development of any assessment instruments.

60606. (a) Prior to approving any available tests of academic achievement for use in kindergarten and grades 1 to 12, inclusive, or adopting any assessments of applied academic skills for use in grades 4, 5, 8, and 10 pursuant to Section 60605, the State Board of Education shall submit those tests or assessments to the Statewide Pupil Assessment Review Panel, which is hereby established, for review by the panel.

(b) The panel shall consist of six members. Three members shall be appointed by the Governor, one member shall be appointed by the Senate Committee on Rules, one member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the Superintendent of Public Instruction. A majority of the panel shall consist of parents whose children attend public schools in the state in kindergarten and grades 1 to 12, inclusive.

(c) Panel members shall serve two-year terms, without compensation. No panel member shall serve more than two consecutive terms.

(d) The panel shall review the tests or assessments specified in subdivision (a) in order to ensure that the content of the tests or assessments complies with the requirements of Section 60614.

(e) The panel shall report its findings and recommendations to the State Board of Education within 60 days of its receipt of each test or assessment. If the panel fails to report within the required 60 days, the test or assessment shall be deemed acceptable to the panel.

60607. (a) Each pupil shall have an individual record of accomplishment by the end of the 12th grade that includes the results of academic achievement tests approved pursuant to subdivision (b) of Section 60605 and administered annually as part of the statewide pupil assessment program, results of end-of-course exams he or she has taken, and whatever vocational education certification exams he or she chose to take.

(b) It is the intent of the Legislature that school districts and schools use the results of the academic achievement tests administered annually as part of the statewide pupil assessment program to provide support to pupils and parents or guardians in order to assist pupils in strengthening their development as learners, and thereby to improve their academic achievement and performance in subsequent assessments.

(c) Any pupil, or his or her parent or guardian, may request and receive individual pupil assessment results from the assessments of applied academic skills administered pursuant to subdivision (c) of Section 60605 to the extent individual results are available. Notwithstanding subdivision (a), these results shall not be included as part of a pupil's record.

(d) Any pupil results or record of achievement shall be private, and may not be released to any person, other than a teacher, counselor, or administrator directly involved with the pupil, without the express written consent of the parent or guardian of the pupil if the pupil is a minor or the pupil if the pupil has reached the age of majority or is emancipated.

60608. The governing board of each district shall, in accordance with the rules and regulations of the State Board of Education, conduct a testing program pursuant to this chapter and may also administer other tests.

60609. The districtwide and school-level results of the assessments of applied academic skills administered pursuant to subdivision (c) of Section 60605, but not the score or relative position of individual pupils, shall be reported to the governing board of the district at least once a year at a regularly scheduled meeting.

60610. At the request of the State Board of Education, and in accordance with rules and regulations that the board may adopt, each county superintendent of schools shall cooperate with and assist school districts under his or her jurisdiction in carrying out the testing programs of those districts and other duties imposed on school districts by this chapter.

60611. No city, county, city and county, or district superintendent of schools or principal or teacher of any elementary or secondary school shall carry on any program of specific preparation of the pupils

for the statewide pupil assessment program or a particular test used therein.

60612. Upon adoption or approval of assessments pursuant to this chapter, the Superintendent of Public Instruction shall prepare and make available to parents, teachers, pupils, administrators, school board members, and the public easily understood materials describing the nature and purposes of the assessments, the systems of scoring, and the uses to which the assessments will be put.

60613. A school district is an agent of the State Department of Education for the purpose of administering assessments required pursuant to this article. No action may be brought or maintained against any school district or its officers or employees acting in accordance with the instructions of the Superintendent of Public Instruction.

60614. Notwithstanding Section 51513, no test, examination, or assessment given as part of the statewide pupil assessment program shall contain any questions or items that solicit or invite disclosure of a pupil's, or his or her parents' or guardians', personal beliefs or practices in sex, family life, morality, or religion nor shall it contain any question designed to evaluate personal behavioral characteristics, including, but not limited to, honesty, integrity, sociability, or self esteem.

60615. Notwithstanding any other provision of law, a parent's or guardian's written request to school officials to excuse his or her child from any or all parts of the assessments administered pursuant to this chapter shall be granted.

60616. Any assessment approved or adopted by the State Board of Education pursuant to this chapter may be reviewed by any Member of the Legislature or any member of the governing board of a school district, if the member agrees in writing prior to the review to maintain the confidentiality of the assessment.

60617. The governing board of any school district may meet in closed session only to review the actual contents of any approved or adopted assessment, provided the governing board agrees by resolution to accept any terms or conditions for that review that are established by rules and regulations of the State Board of Education. The purpose of this provision is to maintain the confidentiality of the assessments under review.

Article 3. Program Evaluation and Analysis

60630. (a) The Superintendent of Public Instruction shall prepare and submit an annual report to the Legislature, the State Board of Education, and each school district in the state containing an analysis, on a school-by-school basis, of the results and test scores of the state testing program. The report shall include an analysis of the operational factors that appear to have a significant relationship

to, or bearing on, the results. The analysis may include, but need not be limited to, the following factors:

(1) Financial characteristics, including specially-funded programs.

(2) Pupil and parent characteristics.

(3) Staff characteristics.

(4) Instructional methodologies and materials.

(b) School districts that elect to participate in the incentive program established pursuant to Article 4 (commencing with Section 60640), shall submit to the State Department of Education whatever information the department deems necessary to carry out this section.

Article 4. Pupil Testing Incentive Program

60640. (a) Commencing in the 1995–96 fiscal year, and from the funds available for that purpose, for each school district that certifies to the Superintendent of Public Instruction that it administers to all of its pupils in the grades designated by paragraph (1) of subdivision (b), an achievement test selected from among those approved by the State Board of Education pursuant to subdivision (b) of Section 60605, the Superintendent of Public Instruction shall apportion five dollars ($5) per pupil tested in the grades specified in paragraph (1) of subdivision (b).

(b) (1) In order to be eligible for the incentive funding identified pursuant to subdivision (a), a school district shall administer the assessments approved by the State Board of Education for this purpose in grades 2 to 10, inclusive, or in as many of those grades as are operated by the school district.

(2) In addition, the governing board of the school district may administer these assessments in other grades as it deems appropriate.

60641. As a condition of receiving the incentive funding specified in Section 60640, a school district shall certify to the Superintendent of Public Instruction that it shall comply with all of the following conditions:

(a) The achievement test shall be administered at a time of year specified by the Superintendent of Public Instruction.

(b) The individual results of each pupil assessment administered pursuant to Section 60640 shall be reported, in writing, to the pupil's parent or guardian. The written report shall include a clear explanation of the purpose of the test, the pupil's score, and its intended use by the school district. Nothing in this subdivision shall be construed to require teachers to prepare individualized explanations of each pupil's test score.

(c) The individual results of each pupil assessment administered pursuant to Section 60640 shall also be reported to the pupil's school and teachers. The school district shall include the pupil's assessment results in his or her pupil records. However, except as provided in this

subdivision, individual pupil assessment results may only be released with the permission of the pupil's parent or guardian.

(d) The districtwide and school-level results of the testing program in the grades designated pursuant to subdivision (b) of Section 60640, but not the score or relative position of individual pupils, shall be reported to the governing board of the district at a regularly scheduled meeting, at the same time that the results of the assessments of applied academic skills are reported pursuant to Section 60609.

Article 5. Golden State Examination Program

60650. There is hereby established the Golden State Examination Program for the purpose of administering the Golden State Examination to pupils enrolled in public high schools. The Golden State Examination shall measure pupil achievement under statewide standards of competency in academic subjects, and shall adopt a special honors designation and insignia on a high school diploma for qualifying pupils. Participation in the Golden State Examination Program shall be voluntary on the part of each school district maintaining a high school. The governing board of each participating school district shall determine the extent to which pupils of the district shall be required to participate in the Golden State Examination.

60651. The Superintendent of Public Instruction shall prepare an annual report comparing examination results among all participating school districts including the average scores achieved on the academic subject matter examination, the number of pupils taking each examination, and the number of pupils qualifying for honors.

60652. It is the intent of the Legislature that school districts encourage local representatives of business and industry to recognize pupils who receive an honors designation based on the Golden State Examinations.

SEC. 2. Chapter 6 (commencing with Section 60800) is added to Part 33 of the Education Code, to read:

CHAPTER 6. PHYSICAL FITNESS TESTING

60800. (a) During the month of March, April, or May, the governing board of each school district maintaining any of grades 5, 7, and 9 shall administer to each pupil in those grades the physical performance test designated by the State Board of Education. Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his or her condition will permit.

(b) Upon request of the State Department of Education, a school district shall submit to the department, at least once every two years, the results of its physical performance testing.

SEC. 3. Section 11126 of the Government Code is amended to read:

11126. (a) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing. As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void. The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body. Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee shall include a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(b) Nothing in this article shall be construed to prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(c) Nothing in this article shall be construed to prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(d) Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be

reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(e) Nothing in this article shall be construed to prevent any state body from holding a closed session to consider matters affecting the national security.

(f) Nothing in this article shall be construed to grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(g) Nothing in this article shall be construed to prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(h) Nothing in this article shall be construed to prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(i) Nothing in this article shall be construed to prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For purposes of this subdivision, the negotiator may be a member of the state body.

For purposes of this subdivision, "lease" includes renewal or renegotiation of a lease.

Nothing in this subdivision shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (q).

(j) (1) Nothing in this article shall be construed to prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(2) Nothing in this article shall be construed to prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(k) Nothing in this article shall be construed to prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(*l*) Nothing in this article shall be construed to prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(m) Nothing in this article shall be construed to prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(n) Nothing in this article shall be construed to prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this subdivision, a state body shall also be exempt from the provision of subdivision (i) relating to the identification of real properties prior to the closed session.

(o) Nothing in this article shall be construed to prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(p) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(q) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(2) (A) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body; or

(B) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to subparagraph (A).

(3) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to paragraph (2) or (3), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(r) Nothing in this article shall be construed to prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(s) Nothing in this article shall be construed to prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an

individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(t) Nothing in this article shall be construed to prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(u) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(v) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(w) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(x) Nothing in this article shall be construed to prevent the State Board of Equalization from holding closed sessions for either of the following:

(1) When considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization.

(2) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(y) Nothing in this article shall be construed to prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(z) This article shall not prevent the Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(aa) This article shall not prevent the Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(bb) Nothing in the article shall be construed to prevent the State Board of Education, or any committee advising the State Board of Education, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

SEC. 4. (a) There is hereby established in state government the Commission for the Establishment of Academic Content and Performance Standards, to consist of 21 members.

(1) The members of the commission shall be as follows:

(A) Eleven members appointed by the Governor.

(B) The Superintendent of Public Instruction, or his or her designee.

(C) Six members appointed by the Superintendent of Public Instruction.

(D) One member appointed by the Senate Committee on Rules.

(E) One member appointed by the Speaker of the Assembly.

(F) One member jointly appointed by the Governor and the Superintendent of Public Instruction, who shall be the chair of the commission.

(2) Members of the commission shall serve at the pleasure of the appointing authority.

(3) It is the intent of the Legislature that the membership of the commission include, but not necessarily be limited to, parents, classroom teachers, representatives of the business community, and individuals with expertise in pupil assessment or expertise in the subject matter areas included in the statewide pupil assessment program.

(b) The commission shall develop academically rigorous content standards and performance standards to be used in public schools maintaining kindergarten and grades 1 to 12, inclusive. The commission shall consider any benchmarks developed by the Education Benchmarks Commission when developing the standards required by this section. Those academically rigorous content standards and performance standards shall comply with all of the following requirements:

(1) Be measurable and objective.

(2) Be aligned with the knowledge and skills called for under the curriculum frameworks adopted by the State Board of Education.

(3) Reflect the knowledge and skills necessary for California's work force to be competitive in the global, information-based economy of the 21st century.

(4) Be comparable in rigor to academic content and performance standards used in the school systems of America's global economic competitors.

(5) Provide the basis for assessments for kindergarten and grades 1 to 12, inclusive, in the following groupings:

(A) Early elementary grades consisting of kindergarten and grades 1 to 3, inclusive.

(B) Upper elementary grades consisting of grades 4 to 6, inclusive.

(C) Early departmentalized grades consisting of grades 7 and 8.

(D) Secondary grades consisting of grades 9 to 12, inclusive.

(c) The commission shall first develop content standards and performance standards in reading, writing, and mathematics prior to developing content standards and performance standards in other core curriculum areas. The commission shall submit content standards and performance standards in each of the core curriculum areas to the State Board of Education for its consideration and adoption as they are completed by the commission.

(d) In developing the academically rigorous content standards and performance standards pursuant to subdivision (b), the commission shall hold at least six public hearings throughout the state to solicit public input.

(e) On or before July 1, 1997, the commission shall have developed and submitted the academically rigorous content standards and performance standards for all core curriculum areas for all grade levels to the State Board of Education for approval by the board.

(f) It is the intent of the Legislature that the Commission for the Establishment of Academic Content and Performance Standards and the Education Benchmarks Commission work cooperatively to achieve the purposes of each commission.

(g) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 5. The State Board of Education shall hold regional public hearings throughout the state on the current curriculum frameworks for the purpose of determining the degree of rigorous, academic focus within each curriculum area. The board shall provide the results of these hearings to the Commission for the Establishment of Academic Content and Performance Standards for the commission to consider in the development of academically rigorous content standards and performance standards. The commission shall make available to the public the information derived from the framework hearings and shall hold regional, public hearings throughout the state to provide the opportunity for public comment on that information as it relates to the establishment of rigorous, academic standards.

SEC. 6. (a) The sum of eleven million dollars ($11,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the 1995–96 fiscal year for allocation as follows:

(1) To school districts for purposes of the incentive funding provided pursuant to Article 4 (commencing with Section 60640) of the Education Code for the 1995–96 fiscal year, four million five hundred thousand dollars ($4,500,000).

(2) To local education agencies for the purpose of implementing the statewide pupil assessment system pursuant to Chapter 5 (commencing with Section 60600) of the Education Code for the 1995–96 fiscal year, to be allocated pursuant to the implementation plan required pursuant to subdivision (b) of Section 60604 of the Education Code, six million five hundred thousand dollars ($6,500,000).

(b) Any funds appropriated pursuant to this section, but not expended during the 1995–96 fiscal year, shall be available for expenditure for the same purposes in the 1996–97 fiscal year. It is the intent of the Legislature that appropriations in the Budget Act of 1996 for the purposes of the statewide pupil assessment program shall be adjusted to reflect the existence of any carry-over funds made available by the operation of this subdivision.

SEC. 7. The Legislature finds and declares that, in addition to the funds appropriated pursuant to Section 6 of this act, Section 53 of Chapter 308 of the Statutes of 1995 appropriated fifteen million dollars ($15,000,000), that shall also be available, pursuant to the provisions of that section, for the purpose of funding the incentive program established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 of the Education Code for the 1995–96 fiscal year.

SEC. 8. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 976

An act to amend Section 56168 of the Education Code, relating to special education.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 56168 of the Education Code is amended to read:

56168. (a) A public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital, or a health facility for medical purposes located either within and outside of this state that did not provide special education to individuals with exceptional needs who satisfy the criteria set forth in paragraph (2) of subdivision (c) of Section 56026 pursuant to a waiver granted under Section 56366.2 for the 1994–95 school year, is ineligible for certification as a nonpublic, nonsectarian school pursuant to Section 56034 and Sections 56365 to 56366.5, inclusive, to provide special education to individuals with exceptional needs. Districts, special education local plan areas, or county offices shall have until September 1, 1994, to find an appropriate alternative placement for any children currently served in one of these programs.

(b) The district, special education local plan area, or county office in which the hospital or health facility is located has the educational responsibility for individuals with exceptional needs who reside in these facilities.

(c) A hospital or health facility is eligible for certification as a nonpublic, nonsectarian agency pursuant to Section 56035 and Sections 56365 to 56366.5, inclusive, to provide designated instruction and services to individuals with exceptional needs whether the child attends a public or nonpublic school or is enrolled in both a public and nonpublic school program as specified in Section 56361.5.

CHAPTER 977

An act to add Section 820.21 to the Government Code, relating to liability.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 820.21 is added to the Government Code, to read:

820.21. (a) Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code shall not extend to any of the following, if committed with malice:

(1) Perjury.
(2) Fabrication of evidence.
(3) Failure to disclose known exculpatory evidence.
(4) Obtaining testimony by duress, as defined in Section 1569 of the Civil Code, fraud, as defined in either Section 1572 or Section 1573 of the Civil Code, or undue influence, as defined in Section 1575 of the Civil Code.

(b) As used in this section, "malice" means conduct that is intended by the person described in subdivision (a) to cause injury to the plaintiff or despicable conduct that is carried on by the person described in subdivision (a) with a willful and conscious disregard of the rights or safety of others.

CHAPTER 978

An act to add Section 1376 to the Civil Code, relating to common interest developments.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 1376 is added to the Civil Code, to read:

1376. (a) Any covenant, condition, or restriction contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, a common interest development that effectively prohibits or restricts the installation or use of a video or television antenna, including a satellite dish, or that effectively prohibits or restricts the attachment of that antenna to a structure within that development where the antenna is not visible from any street or common area, except as otherwise prohibited or restricted by law, is void and unenforceable as to its application to the installation or use of a video or television antenna that has a diameter or diagonal measurement of 36 inches or less.

(b) This section shall not apply to any covenant, condition, or restriction, as described in subdivision (a), that imposes reasonable restrictions on the installation or use of a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of 36 inches or less. For purposes of this section, "reasonable restrictions" means those restrictions that do not significantly increase the cost of the video or television antenna system, including all related equipment, or significantly decrease its efficiency or performance and include all of the following:

(1) Requirements for application and notice to the association prior to the installation.

(2) Requirement of the owner of a separate interest, as defined in Section 1351, to obtain the approval of the association for the installation of a video or television antenna that has a diameter or diagonal measurement of 36 inches or less on a separate interest owned by another.

(3) Provision for the maintenance, repair, or replacement of roofs or other building components.

(4) Requirements for installers of a video or television antenna to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of a video or television antenna that has a diameter or diagonal measurement of 36 inches or less.

(c) Whenever approval is required for the installation or use of a video or television antenna, including a satellite dish, the application for approval shall be processed by the appropriate approving entity for the common interest development in the same manner as an application for approval of an architectural modification to the property, and the issuance of a decision on the application shall not be willfully delayed.

(d) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

CHAPTER 979

An act to add Section 3333.4 to the Civil Code, relating to damages.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. (a) This act shall be known as the Oil Pipeline Environmental Responsibility Act.

(b) The Legislature finds and declares that the transportation of crude oil and related products through public utility pipelines within the State of California is an activity that is required to sustain the economic life of the state but that necessarily entails hazards to the property of those within proximity to an oil pipeline, as well as to the natural resources of the state.

(c) The Legislature further finds and declares that in order to mitigate the risks and hazards of public utility oil pipeline operation, the responsibility of pipeline corporations for preventing, abating, and remediating oil spills from pipelines and the absolute liability of pipeline corporations for property damage caused by oil spills from pipelines should be clarified. To ensure that pipeline corporations have the financial ability to fulfill these obligations, it is necessary to

require them to provide specified evidence of financial responsibility.

(d) The Legislature also finds and declares that evidence of financial responsibility should continue to be provided in amounts to cover risks posed by the pipeline and related facilities following the cessation of operation until the closure of the pipeline and the cleanup of releases from the pipeline have been certified as satisfactory by the State Fire Marshal.

SEC. 2. Section 3333.4 is added to the Civil Code, to read:

3333.4. (a) Each pipeline corporation that qualifies as a public utility within Section 216 of the Public Utilities Code that transports any crude oil or fraction thereof in a public utility oil pipeline system that meets the requirements of subdivision (h) shall be absolutely liable without regard to fault for any damages incurred by any injured party that arise out of, or are caused by, the discharge or leaking of crude oil or fraction thereof from the public utility pipeline.

(b) A pipeline corporation is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the state or a local government caused solely by an act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, other than an earthquake, which damages could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages in the proportion caused by the negligence, intentional malfeasance, or criminal act of the landowner, or an agent, employee, or contractor of the landowner, upon whose property the pipeline system is located.

(3) Except as provided by paragraph (2), damages caused solely by the negligence or intentional malfeasance of the injured person.

(4) Except as provided by paragraph (2), damages caused solely by the criminal act of a third party other than the pipeline corporation or an agent or employee of the pipeline corporation.

(5) Natural seepage from sources other than the public utility oil pipeline.

(6) Damages that arise out of, or are caused by, a discharge that is authorized by a state or federal permit.

(c) Damages for which a pipeline corporation is liable under this section are the following:

(1) All costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration costs.

(2) Injury to, or economic losses resulting from destruction of or injury to, real or personal property.

(3) Injury to, destruction of, or loss of, natural resources, including, but not limited to, the reasonable cost of rehabilitating wildlife, habitat, and other resources and the reasonable cost of assessing that

injury, destruction, or loss, in any action brought by the state, a county, city, or district.

(4) Loss of taxes, royalties, rents, use, or profit shares caused by the injury, destruction, loss, or impairment of use of real property, personal property, or natural resources.

(5) Loss of use and enjoyment of natural resources and other public resources or facilities in any action brought by the state, county, city, or district.

(d) The court may award reasonable costs of the suit, attorneys' fees, and the cost of any necessary expert witnesses to any prevailing plaintiff. The court may award reasonable costs of the suit, attorneys' fees, and the cost of any necessary expert witnesses to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.

(e) (1) A pipeline corporation shall immediately clean up all crude oil, or any fraction thereof, that leaks or is discharged from a pipeline subject to this section. Additionally, the pipeline corporation shall abate immediately, or as soon as practical, the effects of the leak or discharge and take all other necessary remedial action.

(2) A pipeline corporation may recover the costs of the activities specified in this section for which it is not at fault by means of any otherwise available cause of action, including, but not limited to, indemnification or subrogation.

(f) This section shall not apply to claims, or causes of action, for damages for personal injury or wrongful death.

(g) This section shall not prohibit any party from bringing any action for damages under any other provision or principle of law, including but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party to the extent the same party is or has been awarded damages for the same injury under any other provision or principle of law.

(h) This section shall only apply to all of the following:

(1) The pipeline system proposed to be constructed by Pacific Pipeline System, Inc., identified in Public Utilities Commission Application No. 91-10-013, for which the maximum requirement of one hundred million dollars ($100,000,000) set forth in paragraph (1) of subdivision (j) shall apply.

(2) Any other public utility pipeline system for which construction is completed on or after January 1, 1996, other than a pipeline system the entire length of which is subject to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, (Division 7.8 (commencing with Section 8750) of the Public Resources Code). If part, but not all, of a pipeline system is subject to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, any evidence of financial responsibility that satisfies that act, and that meets the conditions of this section, shall be credited toward the requirements of this section.

(3) Any major relocation of three miles or greater of a portion of a pipeline system along substantially new alignments accomplished through the exercise of eminent domain. This section shall not apply to the portions of the pipeline not relocated.

(i) This section shall not apply to the following:

(1) A pipeline system in existence prior to January 1, 1996, that is converted to a public utility prior or subsequent to January 1, 1996.

(2) A public utility pipeline system not otherwise subject to this section, that is the object of repair, replacement or maintenance, unless such activity constitutes relocation as described in paragraph (3) of subdivision (h).

(j) (1) No pipeline system subject to this section shall be permitted to operate unless the State Fire Marshal certifies that the pipeline corporation demonstrates sufficient financial responsibility to respond to the liability imposed by this section. The minimum financial responsibility required by the State Fire Marshal shall be seven hundred fifty dollars ($750) times the maximum capacity of the pipeline in the number of barrels per day up to a maximum of one hundred million dollars ($100,000,000) per pipeline system, or a maximum of two hundred million dollars ($200,000,000) per multiple pipeline systems.

(2) For the purposes of this section, financial responsibility shall be demonstrated by evidence that is substantially equivalent to that required by regulations issued under Section 8670.37.54 of the Government Code, including insurance, surety bond, letter of credit, guaranty, qualification as a self-insurer, or combination thereof or any other evidence of financial responsibility. The State Fire Marshal shall require the documentation evidencing financial responsibility to be placed on file with that office, and shall administer the documentation in a manner substantially equivalent to that provided by regulations issued under Section 8670.37.54 of the Government Code. Financial responsibility shall be available for payment of claims for damages described in subdivision (c) of any party, including, but not limited to, the State of California, local governments, special districts, and private parties, that obtains a final judgment therefor against the pipeline corporation.

(k) The State Fire Marshal shall require evidence of financial responsibility to fund postclosure cleanup costs. The evidence of financial responsibility shall be 15 percent of the amount of financial responsibility required under subdivision (j) and shall be maintained by the pipeline corporation for four years from the date the pipeline is fully idled pursuant to a closure plan approved by the State Fire Marshal.

(*l*) "Fraction" of crude oil means a group of compounds collected by fractional distillation that condenses within the same temperature band, or a material that consists primarily of such a group of compounds or of a mixture of such groups of compounds.

(m) (1) Notwithstanding Section 228 of the Public Utilities Code, for purposes of this section, "pipeline corporation" means every corporation or person directly operating, managing or owning any pipeline system that qualifies as a public utility within Section 216 of the Public Utilities Code and for compensation within this state.

(2) For purposes of this section, "owning" refers to the legal entity owning the pipeline system itself and does not include legal entities having an ownership interest,in whole or in part, in the entity owning the pipeline system or multiple pipeline systems.

(3) "Pipeline system" means a collective assemblage of intrastate line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery station, and fabricated assemblies constructed for the same purpose at substantially the same time that form a facility through which crude oil or a fraction thereof moves in transportation.

CHAPTER 980

An act to amend and supplement the Budget Act of 1995 (Chapter 303 of the Statutes of 1995) by adding Item 5240-490 to Section 2.00 thereof, relating to energy resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of seventeen million two hundred sixteen thousand dollars ($17,216,000) of the money in the Federal Trust Fund, created by Section 16360 of the Government Code, received by the state from federal overcharge funds in the Petroleum Violation Escrow Account, as defined by Section 155 of the Further Continuing Appropriations Act of 1983 (P.L. 97-377) or other federal law, and consisting of federal oil overcharge funds available pursuant to court judgments or federal agency orders, is hereby appropriated for expenditure as follows:

(a) The sum of two million two hundred thousand dollars ($2,200,000) to the California Conservation Corps to develop and establish a southern California energy center.

(b) The sum of two million eight hundred ninety thousand dollars ($2,890,000) to the California Department of Corrections to purchase

energy efficient buses and paratransit vans to be used for transporting of inmates between state institutions.

(c) The sum of eighty-two thousand dollars ($82,000) to the Department of Personnel Administration to develop and administer a statewide telecommuting program.

(d) The sum of two million seven hundred twenty-four thousand dollars ($2,724,000) to the State Energy Resources Conservation and Development Commission to be allocated as follows:

(1) The sum of one million dollars ($1,000,000) for the transportation energy technology and advancement program.

(2) The sum of one million dollars ($1,000,000) for the targeted research and development demonstration program.

(3) The sum of six hundred twenty-four thousand dollars ($624,000) to provide loans for the Farm Energy Loan Program.

(4) The sum of one hundred thousand dollars ($100,000) to provide technical assistance for the Farm Energy Loan Program.

(e) The sum of five million one hundred forty-five thousand dollars ($5,145,000) to the State Energy Resources Conservation and Development Commission for grants as follows:

(1) The sum of ninety thousand dollars ($90,000) to the City of Elverta for clean fuel schoolbuses.

(2) The sum of sixty thousand dollars ($60,000) to the Urban Corps of San Diego for CNG vehicle conversion.

(3) The sum of five hundred thousand dollars ($500,000) to the City of Chula Vista for hydrogen fuel cell demonstration.

(4) The sum of forty thousand dollars ($40,000) to the County of Santa Clara for schoolbuses for wheelchairs.

(5) The sum of one hundred thousand dollars ($100,000) to San Benito High School for two CNG schoolbuses.

(6) The sum of one hundred thousand dollars ($100,000) to the Aromas-San Juan School District for CNG schoolbuses.

(7) The sum of forty thousand dollars ($40,000) to the City of Poway for cogeneration units.

(8) The sum of fifty thousand dollars ($50,000) to the City of Joshua Tree for energy-efficient vehicles.

(9) The sum of three hundred fifty thousand dollars ($350,000) to Cerritos Community College for a teleconferencing center.

(10) The sum of one hundred ten thousand dollars ($110,000) to the Riverside Transit Agency for CNG buses.

(11) The sum of one hundred thirteen thousand dollars ($113,000) to the City of Oceanside for a telecommuting center.

(12) The sum of three hundred thousand dollars ($300,000) to San Joaquin County for a CNG fueling facility.

(13) The sum of five hundred thousand dollars ($500,000) to Riverside County for a mobile CNG dispenser project.

(14) The sum of thirty thousand dollars ($30,000) to the City of Lancaster for conversion of vehicles to natural gas.

(15) The sum of four hundred thousand dollars ($400,000) to the Asian Art Museum for HVAC replacement.

(16) The sum of one hundred sixteen thousand dollars ($116,000) to Long Beach City College for retrofit lighting.

(17) The sum of seven hundred fifty thousand dollars ($750,000) to CALSTART for advanced transportation technologies.

(18) The sum of forty-seven thousand dollars ($47,000) to the City of Escalon for energy efficient motors for wastewater.

(19) The sum of ninety-five thousand dollars ($95,000) to the City of Lodi for conversion of buses to CNG.

(20) The sum of eighty thousand dollars ($80,000) to San Joaquin County for an energy conservation demonstration project.

(21) The sum of eighty thousand dollars ($80,000) to San Joaquin County for courthouse lighting.

(22) The sum of twenty-five thousand dollars ($25,000) to San Joaquin County for a courthouse lighting system.

(23) The sum of forty-five thousand dollars ($45,000) to San Joaquin County for jail variable speed fan drives.

(24) The sum of ninety thousand dollars ($90,000) to San Joaquin County for a courthouse environmental control system.

(25) The sum of ten thousand dollars ($10,000) to the City of Cotati for city hall roof insulation.

(26) The sum of forty thousand dollars ($40,000) to the City of Cotati for alternative fuel vehicles.

(27) The sum of twenty-seven thousand dollars ($27,000) to the City of Novato for an LPG van.

(28) The sum of forty-five thousand dollars ($45,000) to the City of Santa Rosa for water reclamation energy efficiencies.

(29) The sum of forty thousand dollars ($40,000) to the City of Sebastopol for CNG pickup trucks.

(30) The sum of thirty thousand dollars ($30,000) to the City of Sebastopol for a CNG police rescue squad vehicle.

(31) The sum of seventy-two thousand dollars ($72,000) to the City of Carlsbad for natural gas vehicles.

(32) The sum of two hundred fifty thousand dollars ($250,000) to the City of Chula Vista for an aluminum air fuel cell battery project.

(33) The sum of one hundred thousand dollars ($100,000) to the City of Coronado for trash truck conversion to CNG.

(34) The sum of one hundred fifty thousand dollars ($150,000) to the University of California for a rice residue management program.

(35) The sum of twenty thousand dollars ($20,000) to the City of Santa Rosa for the CNG Shuttle.

(36) The sum of two hundred fifty thousand dollars ($250,000) to Southern California Edison for the solar two project.

(f) The sum of one hundred thousand dollars ($100,000) to the Department of Finance to conduct a financial audit of the Petroleum Violation Escrow Account.

(g) The sum of three million eight hundred twenty-five thousand dollars ($3,825,000) to the Department of Transportation for grants as follows:

(1) The sum of one hundred thousand dollars ($100,000) to the City of Ontario for traffic signalization.

(2) The sum of three hundred fifty thousand dollars ($350,000) to the San Bernardino Associated Governments for Metrolink extension.

(3) The sum of two hundred thousand dollars ($200,000) to the College of the Desert for an advanced transportation technology program.

(4) The sum of two hundred fifty thousand dollars ($250,000) to Contra Costa County for a county bicycle implementation program.

(5) The sum of three hundred thousand dollars ($300,000) to the City of Folsom for a rail demonstration project and park and ride site.

(6) The sum of one hundred fifty thousand dollars ($150,000) to the City of Merced for traffic signalization.

(7) The sum of seventy-five thousand dollars ($75,000) to the City of San Jose for a traffic signal management system.

(8) The sum of two hundred fifty thousand dollars ($250,000) to the University of California, Santa Barbara, for a traffic reduction plan.

(9) The sum of three hundred twenty thousand dollars ($320,000) to the West Valley Mission Community College District for a trip reduction program.

(10) The sum of one hundred forty-four thousand dollars ($144,000) for the Altamont Pass Passenger Rail Dial-A-Ride Shuttle.

(11) The sum of twenty-three thousand dollars ($23,000) to the City of Santa Rosa for traffic signal efficiency upgrades.

(12) The sum of four hundred sixty thousand dollars ($460,000) to the City of Santa Maria for a signal interconnect project.

(13) The sum of four hundred thousand dollars ($400,000) to the City of Emeryville for a handicapped access pedestrian bridge.

(14) The sum of three hundred three thousand dollars ($303,000) to the City of Murieta for a I-215 interchange traffic signal.

(15) The sum of one hundred thousand dollars ($100,000) to the City of Santa Rosa for traffic signal modification.

(16) The sum of two hundred thousand dollars ($200,000) to the Compton Redevelopment Agency for solar panels.

(17) The sum of two hundred thousand dollars ($200,000) to the City of Palo Alto for an intermodal transportation station.

(h) The sum of two hundred fifty thousand dollars ($250,000) to the Department of Economic Opportunity for a grant to the Metropolitan Area Advisory Committee to provide assistance to low income families for the purpose of making homes more energy efficient.

(i) Of the funds appropriated in subdivisions (d) and (e), the State Energy Resources Conservation and Development Commission may

designate a maximum of 1 percent to be used for administrative and technical support.

(j) The money appropriated pursuant to subdivisions (a) to (i), inclusive, shall be disbursed by the Controller, subject to approval by the Director of Finance as to which court judgment or federal agency order is the proper source of those funds.

SEC. 2. Item 5240-490 is added to Section 2.00 of the Budget Act of 1995 (Chapter 303 of the Statutes of 1995), to read:

5240–490—Reappropriation, Department of Corrections. The balance of the appropriation provided in the following item is reappropriated for the purpose provided for in that appropriation, and shall be available for encumbrance and expenditure until June 30, 1997:

853—Petroleum Violation Escrow Account

(1) Item 5240–001–853, Budget Act of 1992

SEC. 3. This act shall become operative only upon the enactment of Assembly Bill 285 of the 1995–96 Regular Session.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for essential state funding in supplementation of the Budget Act of 1995, it is necessary that this act take effect immediately.

CHAPTER 981

An act to add Chapter 9.5 (commencing with Section 11530) to Division 10 of the Health and Safety Code, and to add Chapter 2.5 (commencing with Section 653.20) to Title 15 of Part 2 of the Penal Code, relating to crimes.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. (a) Like many other communities across this nation, communities in the State of California are experiencing an increase in the street sales of marijuana, PCP, rock cocaine, and other controlled substances as defined in the Health and Safety Code.

(b) It is the intent of the Legislature to assist law enforcement personnel of this state in abating the sale of controlled substances. The Legislature finds and determines that the sale of controlled substances constitutes a continuing public nuisance which adversely affects the public health, safety, and welfare, fuels fear among the community, and is a factor which not only depreciates the value of property upon which the activity occurs, but also depreciates the value of adjacent and surrounding properties, and adversely affects a local community's image, business, development, and housing costs.

(c) It is the intent of the Legislature to assist law enforcement to minimize the impact which drug sales have on the quality of life, overall sense of feeling of safety and security of its citizens, and economic stability because the sale of controlled substances breeds criminal and gang-related activities and breeds community discontent.

SEC. 2. Chapter 9.5 (commencing with Section 11530) is added to Division 10 of the Health and Safety Code, to read:

CHAPTER 9.5. LOITERING FOR DRUG ACTIVITIES

11530. As used in this subdivision, the following terms have the following meanings:

(a) "Loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(b) "Public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

11532. (a) It is unlawful for any person to loiter in any public place in a manner and under circumstances manifesting the purpose and with the intent to commit an offense specified in Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400).

(b) Among circumstances that may be considered in determining whether a person has the requisite intent to engage in drug-related activity are that the person:

(1) Acts as a "look-out."

(2) Transfers small objects or packages for currency in a furtive fashion.

(3) Tries to conceal himself or herself or any object that reasonably could be involved in an unlawful drug-related activity.

(4) Uses signals or language indicative of summoning purchasers of illegal drugs.

(5) Repeatedly beckons to, stops, attempts to stop, or engages in conversations with passersby, whether on foot or in a motor vehicle, indicative of summoning purchasers of illegal drugs.

(6) Repeatedly passes to or receives from passersby, whether on foot or in a motor vehicle, money or small objects.

(7) Is under the influence of a controlled substance or possesses narcotic or drug paraphernalia. For the purposes of this paragraph, "narcotic or drug paraphernalia" means any device, contrivance, instrument, or apparatus designed or marketed for the use of smoking, injecting, ingesting, or consuming marijuana, hashish, PCP, or any controlled substance, including, but not limited to, roach clips, cigarette papers, and rollers designed or marketed for use in smoking a controlled substance.

(8) Has been convicted in any court within this state, within five years prior to the arrest under this chapter, of any violation involving the use, possession, or sale of any of the substances referred to in Chapter 6 (commencing with Section 11350) or Chapter 6.5 (commencing with Section 11400), or has been convicted of any violation of those provisions or substantially similar laws of any political subdivision of this state or of any other state.

(9) Is currently subject to any order prohibiting his or her presence in any high drug activity geographic area.

(10) Has engaged, within six months prior to the date of arrest under this section, in any behavior described in this subdivision, with the exception of paragraph (8), or in any other behavior indicative of illegal drug-related activity.

(c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for unlawful drug use and trafficking, or if they occur on or in premises that have been reported to law enforcement as a place suspected of unlawful drug activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.

11534. If any section, subdivision, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

11536. A violation of any provision of this chapter is a misdemeanor.

11538. Nothing in this chapter shall prevent a local governing body from adopting and enforcing laws consistent with this chapter. Where local laws duplicate or supplement this chapter, this chapter

shall be construed as providing alternative remedies and not to preempt the field.

SEC. 3. Section 4 of this act is enacted for the purpose of assisting local law enforcement in controlling prostitution-related activities and to minimize the adverse effect these activities have upon local communities.

(b) The Legislature finds and determines that loitering for the purposes of engaging in a prostitution offense constitutes a public nuisance which, if left unabated, adversely affects a community's image, public safety, and residential and business development, and tends to encourage further criminal activity. Furthermore, prostitution-related activities consume an inordinate amount of limited law enforcement resources.

SEC. 4. Chapter 2.5 (commencing with Section 653.20) is added to Title 15 of Part 2 of the Penal Code, to read:

CHAPTER 2.5. LOITERING FOR THE PURPOSE OF ENGAGING IN A PROSTITUTION OFFENSE

653.20. For purposes of this chapter, the following definitions apply:

(a) "Commit prostitution" means to engage in sexual conduct for money or other consideration, but does not include sexual conduct engaged in as a part of any stage performance, play, or other entertainment open to the public.

(b) "Public place" means an area open to the public, or an alley, plaza, park, driveway, or parking lot, or an automobile, whether moving or not, or a building open to the general public, including one which serves food or drink, or provides entertainment, or the doorways and entrances to a building or dwelling, or the grounds enclosing a building or dwelling.

(c) "Loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

653.22. (a) It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.

(b) Among the circumstances that may be considered in determining whether a person loiters with the intent to commit prostitution are that the person:

(1) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution.

(2) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or

engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution.

(3) Has been convicted of violating this section, subdivision (a) or (b) of Section 647, or any other offense relating to or involving prostitution, within five years of the arrest under this section.

(4) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution.

(5) Has engaged, within six months prior to the arrest under this section, in any behavior described in this subdivision, with the exception of paragraph (3), or in any other behavior indicative of prostitution activity.

(c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.

653.24. If any section, subdivision, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion of the chapter.

653.26. A violation of any provision of this chapter is a misdemeanor.

653.28. Nothing in this chapter or Chapter 2 (commencing with Section 639) shall prevent a local governing body from adopting and enforcing laws consistent with these chapters relating to prostitution or prostitution-related activity. Where local laws duplicate or supplement this chapter or Chapter 2 (commencing with Section 639), these chapters shall be construed as providing alternative remedies and not to preempt the field.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 982

An act to amend Sections 44014.5, 44015, 44017, 44017.3, 44020, 44040, 44051, 44056, 44060, and 44062.1 of, and to add Section 44015.3 to, the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

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

SECTION 1. Section 44014.5 of the Health and Safety Code is amended to read:

44014.5. (a) The enhanced program shall provide for the testing and retesting of vehicles in accordance with Section 44010.5 and this section.

(b) The repair of vehicles at test-only stations shall be prohibited, except that the minor repair of components damaged by station personnel during inspection at the station, any minor repair which is necessary for the safe operation of a vehicle while at a station, or other minor repairs, such as the reconnection of hoses or vacuum lines, may be undertaken at no charge to the vehicle owner or operator if authorized in advance in writing by the department.

(c) The department shall provide for the distribution to consumers by test-only stations of a list, compiled by region, of smog check stations licensed to make repairs of vehicular emission control systems. A test-only station shall not refer a vehicle owner to any particular provider of vehicle repair services.

(d) The department shall establish standards for training, equipment, performance, or data collection for test-only facilities.

(e) The department, by regulation, shall prohibit test-only stations from engaging in other business activities that represent a conflict of interest, as determined by the department.

(f) The test-only station may charge a fee, established by the department, sufficient to cover the station's cost to perform the tests required by this chapter. In addition, the station shall charge and collect the certificate fee established pursuant to Section 44060. This subdivision shall apply only to stations contracted for pursuant to subdivision (e) of Section 44010.5.

(g) The department shall ensure that there is a sufficient number of test-only facilities to provide convenient testing for the following vehicles:

(1) All vehicles identified and confirmed as gross polluters pursuant to Section 44081 and Section 27156 of the Vehicle Code.

(2) All vehicles identified by a smog check station prior to repairs as gross polluters or as having been tampered with.

(3) All vehicles designated by the department pursuant to Sections 44014.7 and 44020.

(4) Vehicles issued an economic hardship extension in the previous biennial inspection of that vehicle.

(h) The department shall provide a sufficient number of test-only facilities authorized to perform referee functions to provide convenient testing for those vehicles that are required to report to, and receive a certificate of compliance from, a test-only station by this chapter, including all of the following:

(1) All vehicles seeking to utilize state-operated financial assistance or inclusion in authorized scrap programs.

(2) All vehicles unable to obtain a certificate of compliance from a licensed smog check station pursuant to subdivision (c) of Section 44015.

(3) Any other vehicles that may be designated by the department.

(i) (1) Gross polluters shall be referred to a test-only facility for a post-repair inspection and retest pursuant to subdivision (g). Simply passing the emissions test shall not be a sufficient condition for receiving a certificate of compliance. A certificate of compliance shall only be issued to a vehicle which does not have any defects with its emission control systems or any defects which could lead to damage of its emission control system, as provided in regulations adopted by the department.

(2) The department shall require all vehicles which are tested pursuant to this chapter and found to be gross polluters, or which are found to have been tampered with, to be tested annually at a test-only station for at least two, but not more than five, consecutive years, as the department determines to be necessary to ensure that the program will comply with Environmental Protection Agency performance standards.

SEC. 2. Section 44015 of the Health and Safety Code, as amended by Chapter 27 of the Statutes of 1994, is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle which meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been identified by the smog check station as a gross polluter.

(3) A vehicle that has been identified through roadside auditing as a gross polluter pursuant to Sections 44081 and 44081.6.

(4) A vehicle described in subdivision (c).

(5) A vehicle that was issued an economic hardship extension within the last 12 months.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) An emission cost waiver shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. An emission cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at least equal to the applicable repair cost limit specified in Section 44017.

(2) If the department implements an economic hardship extension program, a one-time economic hardship extension, valid for 12 months, may be issued pursuant to subdivision (e) of Section 44017, upon the request of the vehicle owner, by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable emission limit, as established by the department, and that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected.

(d) No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver or economic hardship extension in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(e) A certificate of compliance or noncompliance shall be valid for 90 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

(g) An economic hardship extension shall not be issued to a vehicle that was issued an emission cost waiver in the previous biennial inspection of that vehicle.

SEC. 3. Section 44015 of the Health and Safety Code, as amended by Section 24 of Chapter 1192 of the Statutes of 1994, is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle which meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been identified by the smog check station as a gross polluter.

(3) A vehicle that has been identified through roadside auditing as a gross polluter pursuant to Sections 44081 and 44081.6.

(4) A vehicle described in subdivision (c).

(5) A vehicle that was issued a hardship extension within the last 12 months.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) An emission cost waiver shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. An emission cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at least equal to the applicable repair cost limit specified in Section 44017.

(2) If the department implements an economic hardship extension program, a one-time economic hardship extension, valid for 12 months, may be issued pursuant to subdivision (e) of Section 44017, upon the request of the vehicle owner, by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable emission limit established by the department and that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected.

(d) No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver or economic hardship extension in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(4) To a motor vehicle registered in the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District that has been operated in excess of the applicable target pollution miles for that vehicle.

(e) A certificate of compliance or noncompliance shall be valid for 90 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

(g) (1) The certificate of compliance or the certificate of noncompliance shall indicate the odometer reading for the vehicle, or an alternative and higher mileage figure certified by the owner to be accurate pursuant to paragraph (2).

(2) The vehicle owner or operator shall sign a statement appearing on the vehicle inspection report certifying the true mileage of the vehicle to the best of the owner's or operator's knowledge.

(3) If a motor vehicle registered in the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District, other than an authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, or an employer-provided carpool or vanpool vehicle, meets the requirements of Section 44012, but has been operated for more than the applicable target pollution miles since its last smog check or fails the visual odometer check specified in Section 44001.6 and paragraph (8) of subdivision (a) of Section 44012, the smog check station shall issue a qualified certificate of compliance or a certificate of noncompliance indicating that the vehicle shall be presented for a smog check at a test-only station or a test and repair station located within the appropriate district after one year rather than in two years.

(4) On and after February 1, 1995, or on and after the date determined pursuant to Section 32 of the act adding this paragraph, whichever is later, the smog check stations in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District shall report electronically to the Department of Motor Vehicles centralized data base established pursuant to Section 44037.1 the odometer reading for the tested motor vehicle, whether

or not the vehicle has met the requirements of Section 44012, and whether the vehicle has been operated for more than the applicable target pollution miles.

(5) If the determination is made that the vehicle has been operated in excess of the applicable target pollution miles, the vehicle inspection report shall contain a message informing the owner that the mileage limit set by the appropriate district has been exceeded and annual smog inspections are now required.

(h) An economic hardship extension program shall not be issued to a vehicle that was issued an emission cost waiver in the previous biennial inspection of that vehicle.

(i) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 4. Section 44015 of the Health and Safety Code, as amended by Section 24.5 of Chapter 1192 of the Statutes of 1994, is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle which meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been identified by the smog check station as a gross polluter.

(3) A vehicle that has been identified through roadside auditing as a gross polluter pursuant to Sections 44081 and 44081.6.

(4) A vehicle described in subdivision (c).

(5) A vehicle that was issued an economic hardship extension within the last 12 months.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) An emission cost waiver shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. An emission cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of complying with Section 4000.3 of the Vehicle Code. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at least equal to the applicable repair cost limit specified in Section 44017.

(2) If the department implements an economic hardship extension program, a one-time economic hardship extension, valid

for 12 months, may be issued pursuant to subdivision (e) of Section 44017, upon the request of the vehicle owner, by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable emission limit, as established by the department, and that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected.

(d) No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver or economic hardship extension in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(e) A certificate of compliance or noncompliance shall be valid for 90 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

(g) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(h) An economic hardship extension shall not be issued to a vehicle that was issued an emission cost in the previous biennial inspection of that vehicle.

SEC. 5. Section 44015.3 is added to the Health and Safety Code, to read:

44015.3. (a) The department may develop and implement the economic hardship extension program specified in paragraph (2) of subdivision (c) of Section 44015 and subdivision (e) of Section 44017. That program shall not become operative until the department issues a public notice declaring that the program established pursuant to Section 44010.5 is operational in the relevant geographical areas of the state or until the date that testing in those geographic areas is operative using loaded-mode test equipment, as defined in this article, whichever occurs first.

(b) The department shall administer the economic hardship extension program in accordance with regulations adopted by the department.

SEC. 6. Section 44017 of the Health and Safety Code is amended to read:

44017. (a) Except as otherwise provided in this section, the cost limit for repairs under the program, including parts and labor, shall be a minimum of four hundred fifty dollars ($450) in all areas where the program operates.

(b) The limit established pursuant to subdivision (a) shall not become operative until the department issues a public notice which declares that the program established pursuant to Section 44010.5 is operational in the relevant geographical areas of the state, or until the date that testing in those geographic areas is operative using loaded mode test equipment, as defined in this article, whichever occurs first. Prior to that time, the following cost limits shall remain in effect:

(1) For motor vehicles of 1971 and earlier model years, fifty dollars ($50).

(2) For motor vehicles of 1972 to 1974, inclusive, model years, ninety dollars ($90).

(3) For motor vehicles of 1975 to 1979, inclusive, model years, one hundred twenty-five dollars ($125).

(4) For motor vehicles of 1980 to 1989, inclusive, model years, one hundred seventy-five dollars ($175).

(5) For motor vehicles of 1990 and later model years, three hundred dollars ($300).

(c) The department shall periodically revise the cost limits specified in subdivisions (a) and (b) in accordance with changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics.

(d) No cost limit shall be imposed in those cases where emissions control equipment is missing or is partially or totally inoperative as a result of being tampered with or when the vehicle has been identified as a gross polluter pursuant to Section 44081 and verified as a gross polluter at a test-only station. The cost limits prescribed pursuant to this section, when implemented, shall not be imposed on vehicles identified as gross polluters prior to repairs at a smog check station. However, if there is no evidence of tampering and the vehicle owner has had repairs performed as necessary to bring the vehicle's emissions below the appropriate threshold established for gross polluters, the emission cost waiver provisions shall apply.

(e) A one-time 12-month economic hardship extension from the biennial certificate of compliance requirement may be granted, pursuant to the program established by the department pursuant to Section 44015.3, to consumers who would be subject to repair costs in excess of the extension limit established by the department if the requirements specified in paragraph (2) of subdivision (c) of Section 44015 are met. The economic hardship extension shall constitute neither a certificate of compliance nor a certificate of noncompliance for the purpose of transferring the ownership or the registration of the vehicle. On or before the expiration date of the economic hardship extension, the vehicle shall be brought fully into compliance with all appropriate emission standards as determined by a test in

accordance with Section 44012 at a test-only station. The emission cost waiver provisions shall not apply to those vehicles.

SEC. 7. Section 44017.3 of the Health and Safety Code is amended to read:

44017.3. (a) Each smog check station shall have posted conspicuously in an area frequented by customers a sign advising of the minimum or maximum amounts established by law to be spent on repairs required to cause a motor vehicle to pass a smog check. The sign shall be required in all stations where smog check inspections are performed. In stations where licensed smog check technician repairs are not performed, the station shall have posted conspicuously in an area frequented by customers a statement that repair technicians are not available and repairs are not performed.

(b) The specific amounts enumerated on the sign shall be consistent with Section 44017 and shall also refer to the exceptions in subdivision (d) of Section 44017.

(c) The sign shall include language, as determined by the department, to warn consumers of the penalties for obtaining a certificate or economic hardship extension by means of fraud.

SEC. 8. Section 44020 of the Health and Safety Code is amended to read:

44020. Notwithstanding any other provision of this chapter, the department may license any registered owner of a fleet of 10 or more motor vehicles subject to this chapter, who so elects, to implement and conduct the tests and to perform necessary service and adjustment on the fleet's vehicles under this chapter, subject to all of the following conditions:

(a) The registered owner's facilities or personnel, or both, or a designated contractor of the registered owner, shall be licensed by the department as a fleet smog check station, and the test and repair system shall conform, in the department's determination, with all provisions of this chapter and all rules and regulations adopted by the department. The regulations shall provide for adequate onsite inspection by the department. Mobile testing equipment certified by the department may be used in accordance with procedures established by the department. The department may prohibit the use of mobile testing equipment if violations occur.

(b) A license issued under this section is subject to Sections 44035, 44050, and 44072.10, and may be suspended or revoked by the department whenever the department determines, on the basis of random periodic spot checks of the owner's inspection system and fleet vehicles, that the system fails to conform or that certificates of compliance have been issued by the owner in violation of regulations adopted by the department. Any person licensed to conduct tests and service and adjustments under this section is deemed to have consented to provide the department with whatever access, information, and other cooperation the department reasonably

determines are necessary to facilitate the random periodic spot checks.

(c) The department or its contractor, on a random periodic basis, shall inspect or observe the inspections performed by licensed fleet smog check stations on not less than 2 percent of the total business fleet vehicles subject to this chapter.

(d) A fleet owner licensed to conduct tests or make repairs pursuant to this chapter shall issue certificates of compliance for motor vehicles. The cost limits in Section 44017 and the economic hardship extension provisions in this chapter shall not apply to any motor vehicle owned by a fleet owner licensed pursuant to this section.

(e) Notwithstanding subdivision (d), certificates of compliance or noncompliance prepared solely for the disposal or sale of motor vehicles owned by a fleet owner licensed pursuant to this section shall be subject to the cost limits in Section 44017.

(f) The department shall establish initial and renewal license fees, which shall not exceed the reasonable costs of administering this section.

(g) Notwithstanding any other provision of this section, fleets consisting of vehicles for hire or vehicles which accumulate high mileage, as defined by the department, shall go to a test-only station when a smog check certificate of compliance is required. Initially, high mileage vehicles shall be defined as vehicles which accumulate 50,000 miles or more each year. In addition, fleets which do not operate high mileage vehicles may be required to obtain certificates of compliance from the test-only station if they fail to comply with this chapter.

(h) Notwithstanding any other provision of this chapter, the department shall have the authority, by regulation, to require testing of vehicle fleets consistent with regulations adopted by the Environmental Protection Agency, if necessary to meet the emission reduction performance standard established by the agency, as determined by the department.

SEC. 9. Section 44040 of the Health and Safety Code is amended to read:

44040. The department may require certificates of compliance, certificates of noncompliance, emission cost waivers, and an economic hardship extension to contain a unique number encoded in bar code. These certificates may be sold to licensed smog check stations by the department, printed by test analyzer systems, or transmitted by electronic means. The department, with the cooperation of the Department of Motor Vehicles, shall periodically check certificates to determine their validity.

SEC. 10. Section 44051 of the Health and Safety Code is amended to read:

44051. The civil penalty for a violation of the specified provisions of this chapter is as follows:

Section	Short Description of Violation	Civil Penalty Minimum	Civil Penalty Maximum
44002	Smog check estimates and invoices	$ 50	$ 500
44012	No emission control system inspection, no emissions test, or inspection test procedures	250	1,500
44014	Unlicensed smog check station	250	1,500
44015	Improper issuance of certificate, including economic hardship extension certificate	150	1,000
44016	Failure to follow established repair procedures	150	1,000
44017	Cost limit or economic hardship extension requirement	150	1,000
44031.5	Test/repair by unlicensed smog check station or nonqualified smog check technician	250	1,500
44032	Qualified smog check technician required	250	500
44033	Smog check station requirement, test on condition of mandatory repair, written estimate requirements	250	1,500
44036	Smog check station certified equipment requirement	150	1,500
44060	Sale, transfer, or purchase of certificate, including economic hardship extension certificate, and certificate or economic hardship extension charges	250	1,500

SEC. 11. Section 44056 of the Health and Safety Code is amended to read:

44056. (a) Except as otherwise provided in Sections 44051 and 44051.5, any person who violates this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, is liable for a civil penalty of not less than one hundred fifty dollars ($150) and not more than two thousand five hundred dollars ($2,500) for each day in which each violation occurs. Any action to recover civil penalties shall be brought by the Attorney General in the name of the state on behalf of the department, or may be brought by any district attorney, city attorney, or attorney for a district.

(b) The penalties specified in subdivision (a) do not apply to an owner or operator of a motor vehicle, except an owner or operator who does any of the following:

(1) Obtains, or who attempts to obtain, a certificate of compliance or noncompliance, an emission cost waiver, or an economic hardship extension, without complying with Section 44015.

(2) Obtains, or attempts to obtain, a certificate of compliance, an emission cost waiver, or an economic hardship extension by means of fraud, including, but not limited to, offering or giving any form of financial or other inducement to any person for the purpose of obtaining a certificate of compliance or an economic hardship extension certificate for a vehicle which has not been tested or has been tested improperly.

(3) Registers a motor vehicle at an address other than the owner's or operator's residence address for the purpose of avoiding the requirements of this chapter.

(4) Obtains, or attempts to obtain, a certificate of compliance by other means when required to report to the test-only facility after being identified as a tampered vehicle or gross polluter pursuant to Section 44015 or 44081.

SEC. 12. Section 44060 of the Health and Safety Code is amended to read:

44060. (a) The department shall prescribe the form of the certificate of compliance or noncompliance, the emission cost waiver, and the economic hardship extension.

(b) Effective not later than January 1, 1996, the certificates, emission cost waivers, and economic hardship extensions shall be in the form of an electronic entry filed with the department, the Department of Motor Vehicles, and any other person designated by the department. In meeting the January 1, 1996, deadline, the department shall ensure that adequate lead time is provided for conversion to an electronic entry type of certificate, emission cost waiver, and economic hardship extension. The department shall ensure that the vehicle owner or operator is provided with a written report, signed by the licensed technician who performed the inspection, of any test performed by a smog check station, including a pass or fail indication, and written confirmation of the issuance of the certificate.

(c) (1) The department shall charge a fee to a smog check station, including a test-only station, and a station providing referee functions, for a vehicle inspected at that station which meets the requirements of this chapter and is issued a certificate of compliance, a certificate of noncompliance, an economic hardship extension, or an emission cost waiver.

(2) The fee charged pursuant to paragraph (1) shall be calculated to recover the costs of the department and any other state agency directly involved in the implementation, administration, or enforcement of the motor vehicle inspection and maintenance program, and shall not exceed the amount reasonably necessary to fund the operation of the program, including all responsibilities, requirements, and obligations imposed upon the department or any of those state agencies by this chapter, which are not otherwise recoverable by fees received pursuant to Section 44034.

(3) Except for adjustments to reflect changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics, the fee for each certificate, waiver, or extension shall not exceed seven dollars ($7).

(4) Fees collected by the department pursuant to this subdivision shall be deposited in the Vehicle Inspection and Repair Fund. It is the intent of the Legislature that a prudent surplus be maintained in the Vehicle Inspection and Repair Fund. If the surplus exceeds the reasonable costs of administration of the programs specified in this chapter and in Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, the department shall, by regulation, prescribe a lower fee for the certificates, waivers, and extensions.

(d) The sale or transfer of the certificate, waiver, or extension, by a licensed smog check station or test-only station to any other licensed smog check station or to any other person, and the purchase or acquisition of the certificate, waiver, or extension, by any person, other than from the department, the department's designee, or pursuant to a vehicle's inspection or repair conducted pursuant to this chapter, is prohibited.

(e) Following implementation of the electronic entry certificate under subdivision (b), the department may require the modification of the analyzers and other equipment required at smog check stations to prevent the entry of a certificate which has not been issued or validated through prepayment of the fee authorized by subdivision (c).

(f) The fee charged by licensed smog check stations to consumers for a certificate, waiver, or extension, shall be the same amount that is charged by the department.

SEC. 13. Section 44062.1 of the Health and Safety Code, as amended by Chapter 27 of the Statutes of 1994, is amended to read:

44062.1. (a) The department shall develop and implement either a repair subsidy program or an economic hardship extension

program at the same time that the four hundred fifty dollar ($450) minimum cost limit for repairs becomes operative pursuant to subdivisions (a) and (b) of Section 44017.

(b) The department may develop and implement the repair subsidy program as a component of the high polluter repair or removal program pursuant to Article 9 (commencing with Section 44090).

(c) (1) If the repair subsidy program or component is implemented, the department shall not implement the economic hardship extension program pursuant to subdivision (c) of Section 44015 and subdivision (e) of Section 44017.

(2) If the department develops and implements the economic hardship extension program, the department shall not implement the repair subsidy program or component.

SEC. 14. Section 44062.1 of the Health and Safety Code, as amended by Section 26 of Chapter 1192 of the Statutes of 1994, is amended to read:

44062.1. (a) The department shall develop and implement either a repair subsidy program or an economic hardship extension program at the same time that the four hundred fifty dollar ($450) minimum cost limit for repairs becomes operative pursuant to subdivisions (a) and (b) of Section 44017.

(b) The department may develop and implement the repair subsidy program as a component of the high polluter repair or removal program pursuant to Article 9 (commencing with Section 44090).

(c) (1) If the repair subsidy program or component is implemented, the department shall not implement the economic hardship extension program pursuant to subdivision (c) of Section 44015 and subdivision (e) of Section 44017.

(2) If the department develops and implements the economic hardship extension program, the department shall not implement the repair subsidy program or component.

(d) The department shall develop and implement a vehicle retrofit subsidy program not later than one year from the operative date specified in Section 32 of the act adding this subdivision.

(e) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 15. Section 44062.1 of the Health and Safety Code, as amended by Section 27 of Chapter 1192 of the Statutes of 1994, is amended to read:

44062.1. (a) The department shall develop and implement either a repair subsidy program or an economic hardship extension program at the same time that the four hundred fifty dollar ($450) minimum cost limit for repairs becomes operative pursuant to subdivisions (a) and (b) of Section 44017.

(b) The department may develop and implement the repair subsidy program as a component of the high polluter repair or removal program pursuant to Article 9 (commencing with Section 44090).

(c) (1) If the repair subsidy program or component is implemented, the department shall not implement the economic hardship extension program pursuant to subdivision (c) of Section 44015 and subdivision (e) of Section 44017.

(2) If the department develops and implements the economic hardship extension program, the department shall not implement the repair subsidy program or component.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the public health from excess vehicular emissions occurring because the high polluter repair and removal program created pursuant to Chapter 28 of the Statutes of 1994 has not received sufficient funding to substantially mitigate the imposition of the higher emission repair cost minimum established pursuant to Chapter 27 of the Statutes of 1994, it is necessary that this act take effect immediately.

CONCURRENT AND JOINT RESOLUTIONS

1995–96

REGULAR SESSION

1995 RESOLUTION CHAPTERS

RESOLUTION CHAPTER 1

Assembly Joint Resolution No. 5—Relative to the Long Beach Naval Shipyard.

[Filed with Secretary of State February 22, 1995.]

WHEREAS, The state has endured billions of dollars in losses through a disproportionate share of federal Department of Defense facilities closures as mandated by the federally appointed Base Closure and Realignment Commissions in 1988, 1991 and 1993; and

WHEREAS, It has been documented that this state has suffered more than its share of economic devastation during the current worldwide economic recession, and is the last of the states to show signs of positive recovery; and

WHEREAS, The state has sustained disasters, both natural and manmade, in recent years from earthquakes in the San Francisco and Los Angeles areas, fires in northern and southern California, and from riots in the greater Los Angeles area; and

WHEREAS, Southern California, through its particular world preeminence in the technologies of earth and space travel, military defense systems, and interglobal communications has been the free world's guarantor of peace through strength of leadership; and

WHEREAS, The Long Beach Naval Shipyard is being considered for closure as part of the military base closure and realignment process; and

WHEREAS, Built in 1943, the Long Beach Naval Shipyard is the Navy's primary surface ship repair facility on the west coast in addition to having the highest aircraft carrier usage of any public shipyard; and

WHEREAS, The Long Beach Naval Shipyard is a large, full service facility that includes 347 acres, four industrial piers, two wharves, and three drydocks; and

WHEREAS, The Long Beach Naval Shipyard represents approximately $757,000,000 in total local spending and 10,100 jobs in the southern California region so that closing the shipyard would have a devastating impact on that area of the state; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature hereby memorializes the President and the Congress of the United States to provide for the continued operation of the Long Beach Naval Shipyard as an essential facility and as an integral part of the southern California economy; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each

Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 2

Assembly Concurrent Resolution No. 8—Relative to John Steinbeck Day.

[Filed with Secretary of State February 28, 1995.]

WHEREAS, John Steinbeck, native son of California, brought fame to this state through his many distinctions as one of America's great writers; and

WHEREAS, People from foreign lands and our nation read his books to obtain a better understanding of the character of our people, and visit us to renew their memories of his novels and acquaint themselves with the beautiful landscape of our countryside made so vivid in his writings; and

WHEREAS, The high honors that have been bestowed on John Steinbeck include the Pulitzer Prize for "The Grapes of Wrath," the Medal of Freedom from President Lyndon Johnson, a special United States Postal Service issue of the John Steinbeck Commemorative Stamp, the American Arts Gold Medallion issued by the United States Mint, and the Nobel Prize for Literature for his writings; and

WHEREAS, California is an integral part of his early novels, including "The Pastures of Heaven," "To a God Unknown," "Tortilla Flat," "In Dubious Battle," "The Red Pony," "Of Mice and Men," "The Grapes of Wrath," and "Cannery Row"; and

WHEREAS, the State of California wishes to perpetuate the memory of John Steinbeck's accomplishments as a writer for future generations; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby declares February 27, in perpetuity, as "John Steinbeck Day."

RESOLUTION CHAPTER 3

Assembly Joint Resolution No. 9—Relative to Norco Naval Warfare Assessment Division.

[Filed with Secretary of State March 3, 1995.]

WHEREAS, The United States Navy has occupied the site of the Naval Warfare Assessment Division in Norco, California since 1941; and

WHEREAS, The Naval Warfare Assessment Division has, since 1951, served the Navy as an independent assessment agent to gauge the war-fighting capacity of ships and aircraft, from unit to battlegroup level, by assessing the suitability of design, the performance of equipment and weapons, and the adequacy of training; and

WHEREAS, The Naval Warfare Assessment Division had its beginning in the Navy during a period when great advancements in weapons technology were being developed and introduced to the fleet; and

WHEREAS, These new technologies brought with them problems in development, acquisition, operation, and support; and

WHEREAS, The Navy needed an unbiased resource with direct access to fleet users in order to provide an objective assessment of war-fighting capability, performance, and effects of improvements; and

WHEREAS, This independent, unbiased assessment has been honed over time into a consolidated, centrally located, and fully integrated organization dedicated to provide Navy and other Department of Defense decisionmakers with critical, accurate, and reliable information needed to improve the war-fighting capability and readiness of U.S. Armed Forces; and

WHEREAS, The threats and challenges facing the military today cannot be met using the technology of yesterday; and

WHEREAS, The Naval Warfare Assessment Division services focus on weapon and combat system performance, fleet training effectiveness, systems, and material quality and these services are sponsored by more than 120 Navy, Marine Corps, Army, and Air Force programs, and by other U.S. and foreign government agencies; and

WHEREAS, More than 3,500 government and industry customers rely on the Naval Warfare Assessment Division for its expertise; and

WHEREAS, The newly opened Warfare Assessment Laboratory in Norco has become the focal point for integrated analysis that electronically links analysts at the Norco site with Navy firing ranges, ships at sea, and aircraft or missiles in actual flight, allowing near real time access to data that used to take weeks to obtain and compile; and

WHEREAS, This laboratory is a unique facility that can support functions that no other single facility in the United States can support such as Joint Service exercises, war gaming, and simulation; and

WHEREAS, The central location of the Naval Warfare Assessment Division in Norco is ideal. The facility is in close proximity to the San Diego Naval Complex, the Port Hueneme/Ventura plain Naval Complex, Camp Pendleton, and China Lake. Furthermore, the Naval Warfare Assessment Division is independent of each of these other facilities; and

WHEREAS, The Naval Warfare Assessment Division contributes more than $149 million to the region's economy by employing more

than 1,000 people and by using more than 400 contractors and suppliers; and

WHEREAS, For all of the above reasons, the Naval Warfare Assessment Division is of the utmost importance in maintaining the preparedness of the armed forces for the defense of the United States; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature hereby memorializes the Base Realignment and Closure Commission, the President and the Congress of the United States to provide for the continued operation of the Norco Naval Warfare Assessment Division as an essential facility for the readiness and defense of the United States; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Base Realignment and Closure Commission, the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representatives from California in the Congress of the United States.

RESOLUTION CHAPTER 4

Senate Concurrent Resolution No. 18—Relative to Week of the School Administrator.

[Filed with Secretary of State March 3, 1995.]

WHEREAS, Approximately 15,000 certificated and classified school administrators work in California's public schools; and

WHEREAS, Nearly 60 percent of these administrators are principals and vice principals providing direct support for the educational programs at schoolsites; and

WHEREAS, Research has determined that one of the main attributes of effective schools is the competent leadership of principals; and

WHEREAS, Other certificated and classified administrators provide leadership and support for the educational program by developing and implementing the curriculum, selecting textbooks and instructional materials, recruiting, training, and evaluating classified and certificated staff, managing the budget and monitoring cost controls, implementing school board policies and complying with federal, state, and local regulations and laws, planning and maintaining school facilities, and providing transportation, nutrition, and social service programs to pupils and their families; and

WHEREAS, Research shows that efficient district-level administration improves teacher effectiveness; and

WHEREAS, Research shows that public school administration in California has become increasingly efficient and effective, with fewer administrators managing more schools with more pupils than in the past; and

WHEREAS, A school's administrative team includes confidential employees who perform and assist in the performance of many critical functions; and

WHEREAS, School administrators and confidential employees ensure that effective and innovative classroom instruction is promoted in every area of California; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the week of March 6 through March 10, 1995, be proclaimed the Week of the School Administrator, in honor of the many outstanding contributions and services provided by the administrative teams in California's public school districts; and be it further

Resolved, That the administrators of California's public schools be commended for their support of, and contributions to, quality education in the state.

RESOLUTION CHAPTER 5

Assembly Concurrent Resolution No. 7—Relative to proclaiming Architecture Week.

[Filed with Secretary of State March 13, 1995.]

WHEREAS, Architecture influences the daily lives of all Californians through the definition and enhancement of the areas in which we work, play, and live; and

WHEREAS, More than 15,000 licensed architects practice in California and are entrusted by the state to protect the public health, safety, and welfare through their concern for, and understanding of, important issues such as seismic safety, growth management, accessibility for people with disabilities, historic preservation, energy conservation, housing for the homeless, and the sensitivity of the relationship between nature and the built environment; and

WHEREAS, California architects have been recognized as forerunners of architectural design in the United States and have helped create California's unique visual character through their innovative and responsive designs of public and private spaces; and

WHEREAS, Architects have worked with teachers to establish a built environment education program in California's public schools to teach young people about the relationship between people and their built environments; and

WHEREAS, The American Institute of Architects, California Council (AIACC), in representing architects and the architectural profession in California, has worked in concert with other organizations in the design and construction industry to endeavor to streamline the state government's regulation of their industries; and

WHEREAS, Architects at local AIA chapters have worked diligently to represent architects and the architectural profession and to serve the public interest on issues as community disaster assistance following earthquakes and fires, managing growth, housing the homeless, and preserving the architectural heritage of our communities; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of March 27 through April 2, 1995, is hereby proclaimed Architecture Week; and be it further

Resolved, That the Legislature urges all Californians to become aware of architecture, architectural design, and the architects who helped to shape our built and natural environments; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 6

Assembly Concurrent Resolution No. 5—Relative to Adult Education Week.

[Filed with Secretary of State March 16, 1995.]

WHEREAS, The mission of adult education in California's public schools is to provide lifelong educational opportunities and services to address the needs of a society impacted by rapid technological, economic, and social change; and

WHEREAS, Adult education, as delivered by school districts, has been a permanent and valued service to millions of Californians seeking a second chance for a high school education, occupational training, and other education services; and

WHEREAS, More than 2,000,000 adults and 230,000 high school pupils are served each year by adult education programs in 380 school districts throughout the state; and

WHEREAS, Adult education in the public schools has a 150-year history of being the primary educational provider for immigrant and minority adults seeking to become more productive members of a new society; and

WHEREAS, Adult education in public schools contributes significantly to the reduction of vandalism and other crimes by providing day and evening academic and vocational training

programs for a segment of the public that does not aspire to higher education; and

WHEREAS, Every year more than 500,000 immigrants from numerous countries seek out adult education classes to learn the English language and to gain an understanding of the political, economic, and social systems that direct our democratic form of government; and

WHEREAS, Adult education is the segment of public education assigned the historic mission of serving disadvantaged adults seeking to become economically self-sufficient; and

WHEREAS, Thousands of persons trapped by circumstances in the welfare cycle have found self-sufficiency through basic education classes, job-entry skill training, and job placement through attendance in adult education classes; and

WHEREAS, During the last 13 years, more than 2,800,000 adult education students in California obtained job skills by attending adult education vocational training programs; and

WHEREAS, More than 50 percent of primary wage earners in California find it necessary to change careers four or more times during their lifetimes, and need retraining to remain employable; and

WHEREAS, More than 933,000 adults with physical and mental disabilities obtained job skills training and basic education in classes for developmentally disabled adults offered by adult education in public schools between 1981 and 1992; and

WHEREAS, The California State Legislature supports adult education in public schools by finding and declaring in Section 8500 of the Education Code "that adult continuing education is essential to the needs of society in an era of rapid technological, economic, and social change and that all adults in California are entitled to quality publicly supported continuing education opportunity"; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the week of March 12 through 18, 1995, as Adult Education Week, to afford an opportunity for the citizens of California to become aware of the need to continue the valuable services provided by public adult education in the State of California; and be it further

Resolved, That the Chief Clerk of the Assembly transmit this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 7

Senate Concurrent Resolution No. 13—Relative to Women's History Month.

[Filed with Secretary of State March 17, 1995.]

WHEREAS, California women of every race, class, and ethnic background who have settled this great state have endured rigors whether they were a servant, a teacher, or an artisan's wife; each faced the common task of achieving survival for themselves or their families in a land that yielded nothing easily; toiling from sunup to sundown, these women played a pivotal role in shaping the economic, cultural, and social fabric of our state; and

WHEREAS, At the time gold was discovered in Sutter's Creek, women were entering the labor force in growing numbers as clerks, shoe workers, waitresses, printers, glass packers, domestics, textile workers, farmworkers, tailoresses, school teachers, writers, rubber workers, agents, music teachers, milliners, factory operatives of many kinds, type dressers, eyelet makers, hatters, tack makers, and squib makers, and became part of the labor movement in California as well as the United States, working both inside and outside of the home; and

WHEREAS, Women were among the workers in el Pueblo de la Reina de Los Angeles sobre el Rio de la Porciuncula; and

WHEREAS, August 26, 1995, marks the 75th anniversary of women's suffrage in the United States, a campaign that lasted over 72 years, fought by thousands of women who circulated countless petitions and gave speeches in churches, convention halls, meeting houses, and on street corners, before winning ratification of the 19th Amendment to the United States Constitution on August 20, 1920, giving women the right to vote; and

WHEREAS, Women have been leaders in every movement for progressive social change, including their own suffrage movement, the fight for emancipation, the fostering of business development and entrepreneurship, the struggle to organize labor unions, and the civil rights movement; and

WHEREAS, Despite these contributions, the role of American women in history has been consistently overlooked and undervalued; and

WHEREAS, The celebration of Women's History Month will provide an opportunity for schools and communities to focus attention on the historical role and accomplishments of the women of California and the United States, and for students, in particular, to benefit from an awareness of these contributions; and

WHEREAS, Women's History Month will include International Women's Day on March 8, originally proclaimed in 1910 to recognize and commemorate the valuable contributions women have made to the labor movement in improving working conditions; and

WHEREAS, The observance of Women's History Week was initiated by the Sonoma County Commission on the Status of Women in 1978, a celebration which evolved into Women's History Month,

commemorated throughout the nation by schools, historians, and community groups; and

WHEREAS, The achievements of women who have gone before us will enable contemporary women and men to create tomorrow's history by working toward an end to physical and sexual violence against women, discrimination in employment, the "feminization of poverty," and by advocating the full participation of women in economic and political life at the local, state, and national level; and

WHEREAS, The story of the women's rights movement deserves telling because of the significance and scope of women's role in making history and shaping the cultural and societal makeup of California and the United States, and because it is a rich part of our common heritage, a story of gallantry and devotion to the belief that the opportunity for complete human dignity should not be denied to one-half of the state and the nation; and

WHEREAS, The 1995 theme for Women's History Month is "Women's History: Promises to Keep," inviting all Californians to remember the many roles women have played in the transformation of our state and our nation, the battles fought and won in the past as well those we must continue to fight to ensure women's rightful place in history, and to pass on the promise of equality to women and men of the future through the evolution of women's roles in a dramatically changing society; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California takes pleasure in joining the California Commission on the Status of Women, the Sonoma County Commission on the Status of Women, the Los Angeles County Commission for Women, and other city, county, and community commissions for women in California, in honoring the contributions of women, and proclaims the month of March 1995 as Women's History Month; and be it further

Resolved, That the Legislature of the State of California urges all Californians to join in the celebration of International Women's Day on March 8, 1995; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Chair of the California Commission on the Status of Women and the Chair of the Sonoma County Commission on the Status of Women for distribution to appropriate organizations.

RESOLUTION CHAPTER 8

Assembly Concurrent Resolution No. 18—Relative to Mediation Week.

[Filed with Secretary of State March 20, 1995.]

WHEREAS, The legal needs of our society have increased dramatically; and

WHEREAS, In an effort to ameliorate these conditions, restore harmony, improve relations between citizens and within neighborhoods and families, and relieve the growing burden on our judiciary, many of our citizens have turned to dispute resolution services, with resultant social and economic benefits; and

WHEREAS, Mediation, which provides parties with a simplified and economical procedure for obtaining prompt and equitable resolution of their disputes and a greater opportunity to participate directly in resolving their disputes, has proven over the years to be one of the most effective of these alternative dispute resolution (ADR) techniques; and

WHEREAS, California has had mandatory mediation of child custody and visitation disputes since 1981, and evaluations of these programs have found that mediation has resulted in the resolution of over two-thirds of the mediated disputes and achieved a high satisfaction rate among the participants; and

WHEREAS, Studies by the Rand Corporation and others show that the use of mediation and other appropriate ADR processes can reduce the time, cost, and stress of resolving disputes in many cases, both to disputants, by reducing costs for such things as expert witnesses and trial preparation, and to the justice system as a whole by as much threefold to fivefold over the cost of traditional court processing of civil cases; and

WHEREAS, The State Bar of California and many local bar associations are engaged in promoting the use of mediation and raising public consciousness about its merits, and are seeking to increase public use of, and support for, ADR applications; and, to that end, are cooperating in many activities to assist counties and dispute resolution providers in their efforts at serving citizens; and

WHEREAS, The State of California now has thousands of citizens trained as mediators and many agencies, organizations, and attorneys who specialize in providing related services and ready assistance to those in need of services; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby designates the week of March 19 to March 25, 1995, inclusive, as Mediation Week, in order to afford an opportunity for the citizens of California to become aware of the availability of mediation and other ADR techniques as options for solving their legal problems, and to express sincere appreciation to our citizens who are working diligently in assisting fellow citizens and businesses in the resolution of conflict and the settlement of disputes; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 9

Assembly Concurrent Resolution No. 1—Relative to proclaiming Southeast Asia Genocide Remembrance Week.

[Filed with Secretary of State March 28, 1995.]

WHEREAS, The genocide which is occurring in the Southeast Asian Countries of Cambodia, Vietnam, and Laos following their fall to Communist forces in April 1975 is a human tragedy of immense proportions; and

WHEREAS, After the fall of Cambodia, millions of Cambodians were forcibly taken from their homes and put in concentration camps set up by the Khmer Rouge; and

WHEREAS, The Khmer Rouge executed all former government officials, military personnel, civil servants, professionals, and other educated persons; and

WHEREAS, Millions of Cambodians died of starvation in these concentration camps; and

WHEREAS, After the fall of South Vietnam to the Communists in 1975, the Communists began methodically to execute former government officials, civil servants, and military personnel; and

WHEREAS, Tens of thousands of Vietnamese patriots have been executed since 1975; and

WHEREAS, The Communist government of Laos is reportedly conducting chemical warfare against indigenous Hmong tribesmen; and

WHEREAS, The Surgeon General of the United States Department of the Army conducted an exhaustive study which confirmed the chemical warfare being conducted by the Communist government of Laos; and

WHEREAS, Amnesty International has determined that between 1.2 million and 2.5 million Cambodian, Vietnamese, and Laotian people have perished in this genocide since 1975; and

WHEREAS, The Southeast Asia Genocide is continuing today in these countries, as evidenced by the thousands of refugees fleeing from these countries each month; and

WHEREAS, The world must be made aware of the terrible reality and tragedy of the Southeast Asia Genocide so that it will be stopped; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of April 23 through April 29, 1995, is hereby proclaimed Southeast Asia Genocide Remembrance Week; and be it further

Resolved, That the Legislature urges all Californians to learn more about the Southeast Asia Genocide and to participate in the activities of Southeast Asia Genocide Remembrance Week; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 10

Assembly Concurrent Resolution No. 4—Relative to California Holocaust Memorial Week.

[Filed with Secretary of State March 28, 1995.]

WHEREAS, More than 50 years have passed since the tragic events we now call the Holocaust transpired in which the dictatorship of Nazi Germany murdered six million Jews as part of a systematic program of genocide known as "The Final Solution of the Jewish question"; and

WHEREAS, The Holocaust was a tragedy of proportions the world had never witnessed; and

WHEREAS, We must be reminded of the reality of the Holocaust's horrors so they will never be repeated; and

WHEREAS, Each person in the State of California should set aside moments of his or her time every year to give remembrance to those who lost their lives in the Holocaust; and

WHEREAS, The United States Holocaust Memorial Council has designated the week of April 23 through April 29, 1995, as Holocaust Memorial Week-Days of Remembrance for Victims of the Holocaust; and

WHEREAS, April 27, 1995, is Yom HaSho'ah, and has been designated internationally as a day of remembrance for victims of the Holocaust; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of April 23 through April 29, 1995, be proclaimed as California Holocaust Memorial Week, and that Californians are urged to observe these days of remembrance for victims of the Holocaust in an appropriate manner; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 11

Senate Concurrent Resolution No. 21—Relative to California State Highway System Centennial Day.

[Filed with Secretary of State April 12, 1995.]

WHEREAS, The initial efforts to establish a State Highway System were set in motion on April 11, 1895, when three commissioners were appointed as a Bureau of Highways to survey the condition of the roads and bridges of the State of California; and

WHEREAS, In 1895 and 1896, the commissioners drove a buckboard through every California county, traveling over 7,000 miles, and, thereafter, submitted a report to Governor James H. Budd that recommended a system of state highways "... traversing the great belts of natural wealth which our State possesses, connecting all large centers of population, reaching the county seat of every county ..."; and

WHEREAS, In the intervening 100 years, the State Highway System has grown into a 15,000-mile network of modern, safe, and convenient freeways, expressways, and highways providing Californians with an unprecedented degree of mobility; and

WHEREAS, This system is a model for highways throughout the world, with State of California engineers having won countless awards and commendations for their outstanding and innovative designs; and

WHEREAS, The Bureau of Highways eventually became the Division of Highways of the Department of Public Works, which later evolved into today's Department of Transportation or "Caltrans"; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims April 11, 1995, as California State Highway System Centennial Day; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 12

Senate Concurrent Resolution No. 22—Relative to Unwed Teenage Pregnancy Prevention Month.

[Filed with Secretary of State April 12, 1995.]

WHEREAS, There is a need to emphasize the importance of a strong partnership between the community and the family in helping young people maximize their potential and avoid life compromising behaviors; and

WHEREAS, The State of California is committed to involving businesses, media, temples, mosques, churches, synagogues, and other religious institutions, parents, educational institutions, policymakers, agencies, and health care providers in helping to prevent unwed teenage pregnancy; and

WHEREAS, Unwed teenage pregnancy has been linked with other service issues facing our community, including crime, poverty, child abuse, infant mortality, unemployment, substance abuse, and violence; and

WHEREAS, Unwed teenage pregnancy significantly affects the health, economic, and educational future of teenagers; and

WHEREAS, Unwed teenage pregnancy and parenthood is a significant factor in school dropouts among females and males and their long-term welfare dependency, adding $1,300,000,000 annually to taxpayers' costs; and

WHEREAS, The California unwed teenage pregnancy rate is one-third higher than the nation's average and is, in fact, the highest in the United States; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the state proclaims April, 1995 as Unwed Teenage Pregnancy Prevention Month; and be it further

Resolved, That the Legislature encourages people in all communities to participate in appropriate ceremonies and activities during Unwed Teenage Pregnancy Prevention Month.

RESOLUTION CHAPTER 13

Assembly Concurrent Resolution No. 25—Relative to Donor Family Recognition Day.

[Filed with Secretary of State April 19, 1995.]

WHEREAS, Every three hours one person in the United States dies while awaiting organ transplantation, and in 1994, 3,098 persons died while awaiting transplants because too few families agreed to give the "Gift of Life" by consenting to organ donation on behalf of their deceased loved ones; and

WHEREAS, In addition to solid organs, transplants can be performed using tissues such as heart valves for cardiac patients, corneas for patients with corneal blindness, skin for patients with critical burns who require skin grafts, and bone and cartilage for reconstructive or rehabilitative orthopedic transplants; and

WHEREAS, More than 18,000 organ transplants were performed in the United States in 1994, of which 2,400 were performed in California; and

WHEREAS, The national waiting list of patients in need of solid organ transplants now exceeds 38,000 men, women, and children; and

WHEREAS, More than 400,000 tissue transplants were performed in the United States in 1994, of which more than 40,000 were

performed in California, most of which were skin, bone, tendon, and cartilage allografts; and

WHEREAS, At any given time the number of patients in the United States waiting to receive tissue transplants exceeds 10,000 men, women, and children; and

WHEREAS, More than 41,000 corneal transplants were performed in the United States in 1994, of which 4,736 were performed in California; and

WHEREAS, The national waiting list of patients in need of corneal transplants exceeds 6,000 men, women, and children; and

WHEREAS, Evidence about a person's willingness to be an organ and tissue donor, even in the form of a signed Organ Donor Declaration on a California driver's license under the Uniform Anatomical Gift Act, often can be outweighed when families elect not to consent to donation; and

WHEREAS, In 1994, more than 2,400 California families gave the "Gift of Life" to critically ill people in California, across the United States, and even in other countries, by consenting to the prompt recovery of organs and tissues on behalf of their deceased family members, even during their time of grief and bereavement; and

WHEREAS, One California family, the family of the late Nicholas Green of Bodega Bay, has received international recognition for their altruistic decision to donate Nicholas' organs and tissues to desperately ill children and adults in Italy, where Nicholas tragically perished in October 1994, at the age of seven; and

WHEREAS, In California there is a need for increased education and awareness about the supply and demand for organ and tissue donation so that patients, families, and their physicians can speak openly about organ and tissue donation, participate in family discussions, prepare Advance Directives stipulating their wishes regarding organ and tissue donation, and recognize that organ and tissue donation is a lifesaving memorial tribute to deceased loved ones; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims Monday, April 17, 1995, as California Donor Family Recognition Day to coincide with National Organ and Tissue Donor Awareness Week from April 16, 1995 through April 22, 1995, so that the citizens of California may be made aware of the need for organ and tissue donation and the opportunity that organ and tissue donation offers as a lifesaving memorial tribute to deceased loved ones; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor of the State of California, to the President and Vice President of the United States, to each Senator and Representative from California in the Congress of the United States, to the Secretary of Health and Human Services, and to the Director of the United Network for Organ Sharing, advising them of

the special recognition afforded by the Legislature to those families who have given the "Gift of Life."

RESOLUTION CHAPTER 14

Assembly Concurrent Resolution No. 26—Relative to Armenian Genocide Remembrance Day.

[Filed with Secretary of State April 24, 1995.]

WHEREAS, The Armenian Genocide of 1915–1923 was the first genocide of the twentieth century; and

WHEREAS, The atrocities committed by the Turkish Ottoman Empire resulted in the deaths of 1,500,000 men, women, and children of Armenian descent; and

WHEREAS, As the first victims of genocide in the twentieth century, Armenians throughout the world are keenly aware of, and highly sensitive to, the need for constant vigilance to prevent similar catastrophes in the future; and

WHEREAS, Recognition of the Eightieth Anniversary of this genocide is crucial to ensuring against the repetition of genocide and provides the American public with an understanding of America's heritage; and

WHEREAS, Numerous nations are signatories to the Genocide Convention, acknowledging the Armenian Massacres committed by the Turkish Ottoman Empire of 1915–1923; and

WHEREAS, California is home to the largest Armenian-American population in the United States; and

WHEREAS, Armenian-Americans living in California have enriched our state through their leadership in business, agriculture, academia, government, and the arts; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That Members of the Legislature hereby designate April 24, 1995, as "California Day of Remembrance of the Eightieth Anniversary of the Armenian Genocide of 1915–1923"; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor of the State of California and to the author for appropriate distribution.

RESOLUTION CHAPTER 15

Assembly Concurrent Resolution No. 10—Relative to Blue Ribbon Week.

[Filed with Secretary of State April 26, 1995.]

WHEREAS, The brave and devoted peace officers who willingly dedicate their lives to securing a safe society for all are one of our most important resources; and

WHEREAS, Peace officers have long sustained a tradition of maintaining the highest quality possible in the performance of their duties so as to provide a better life environment for others; and

WHEREAS, Peace officers have recently been penalized for the highly publicized acts of a few who are alleged to have abused their authority; and

WHEREAS, The Support Our Law Enforcement Committee and the California Legislature designated the first week of May 1993 as Blue Ribbon Week in an effort to preserve and highlight the commitment of all peace officers and law enforcement agencies to maintaining the security of our communities; and

WHEREAS, Blue Ribbon Week is intended as a show of confidence and support by the general public for all peace officers and law enforcement agencies and as a tremendous morale boost for all the dedicated men and women who wear a badge for the protection of our communities; and

WHEREAS, Every citizen who wears or displays a blue ribbon during the week during which May 15 falls will demonstrate his or her support for every peace officer and law enforcement agency now serving the State of California; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That, on and after January 1, 1996, the week during which May 15 falls each year shall be proclaimed as Blue Ribbon Week in recognition and support of all peace officers and law enforcement agencies, and that all citizens are urged to annually observe these days by wearing or displaying a blue ribbon; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 16

Assembly Joint Resolution No. 25—Relative to federal impact aid.

[Filed with Secretary of State April 26, 1995.]

WHEREAS, The Congress of the United States, acknowledging the fiscal burden placed on local educational agencies by the loss of revenue from traditional funding sources such as property, sales, and income taxes resulting from a federal presence, in 1950 enacted Public Law 81-815/874 authorizing the Impact Aid program that was

reauthorized in 1994 as Section 8003 of Title VIII of Public Law 103-382 (20 U.S.C. Sec. 236 and following); and

WHEREAS, Federal impact aid is funding provided to a local school district in lieu of taxes not paid by the federal government and certain federal employees and to compensate for revenues the local community would collect if the land did not belong to the federal government; and

WHEREAS, Unlike other federally funded education programs, federal impact aid is not a program designed to respond to a social need or provide supplemental state and local funding but is a program designed to help cover basic education costs; and

WHEREAS, Federal impact aid is a program that imposes no federal requirements directing states or schools to develop performance standards or learning objectives; and

WHEREAS, Federal impact aid is funding that goes directly to the local agency for the general support of the education program for all students as determined by the local educational agency without burdensome bureaucratic costs; and

WHEREAS, There are 229 California school districts serving approximately 2,200,000 students located throughout the state from Del Norte County in the north, to San Diego County in the south, that educate 180,000 federally connected children who depend on the federal fair share financial contribution to the local educational system; and

WHEREAS, Withdrawal of federal impact aid funding would adversely impact the educational program of every school district that depends on federal impact aid to provide the federal government's share of support for the education of the federally connected child and force districts to curtail services to all children; and

WHEREAS, The withdrawal of federal impact aid funding would result in state and local taxpayers subsidizing the education of the federally connected child; and

WHEREAS, California and its citizens are struggling to overcome a severe economic crisis; and

WHEREAS, The federal government's financial support for California's federally connected child and federal presence has declined below the 1981 level of funding although the numbers of children in the educational system has been increasing; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California proclaims its support for the maintenance and full funding of federal impact aid to local school districts; and be it further

Resolved, That the Legislature respectfully memorializes the President and Congress of the United States to uphold the responsibility of the federal government to provide funding to local school districts impacted by a federal presence; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 17

Assembly Joint Resolution No. 21—Relative to McClellan Air Force Base.

[Filed with Secretary of State April 27, 1995.]

WHEREAS, McClellan Air Force Base, located in the City of Sacramento, California, is one of the five major Air Force logistic command centers in the United States; and

WHEREAS, This base has been a major aircraft repair facility for almost 60 years; and

WHEREAS, McClellan is one of the largest United States Air Force bases as well as the largest employer in northern California; and

WHEREAS, McClellan is the home facility for other critical and essential military organizations, including the Coast Guard Rescue Service, a Reserve Tanker Wing, and a National Guard Tanker Unit; and

WHEREAS, The base plays a key function in supporting the responsibility of the entire Air Force and has been a major maintenance and support element in World War II, the Korean Conflict, the Vietnam Conflict, the Gulf Conflicts, as well as fulfilling numerous other tactical maintenance requirements; and

WHEREAS, McClellan has been a part of the State of California prior to the buildup of our armed forces during World War II and its capability could not be duplicated today without a major expenditure of funds; and

WHEREAS, McClellan Air Force Base is geographically and strategically located on the West Coast and serves as a gateway to our forces in the Pacific Basin; and

WHEREAS, McClellan has developed extremely advanced technology not only for aircraft maintenance but for medical research as well as composite research that is world renowned; and

WHEREAS, Potential loss both to the personnel at McClellan as well as the State of California that would result from closure of the base is inestimable in terms of technology, health and welfare, jobs, and community spirit; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Defense Base Closure and Realignment

Commission, the President and Congress of the United States to consider the strategic importance of McClellan Air Force Base and to oppose proposals to close this important military installation; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Chairman of the Defense Base Closure and Realignment Commission, to the President and Vice President of the United States, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 18

Assembly Concurrent Resolution No. 20—Relative to the National Girls Initiative—Take Our Daughters To Work Day.

[Filed with Secretary of State May 1, 1995.]

WHEREAS, According to the 1992 "AAUW Report: How Schools Shortchange Girls," although most girls feel confident in themselves at the age of nine years, more than two-thirds of them have lost this confidence by the time they reach high school; and

WHEREAS, This lack of self-esteem is evidenced in disturbing new statistics developed by the Minnesota Women's Fund, "Reflections on Risk: Growing Up Female in Minnesota," 1990, and "American's Adolescents: How Healthy Are They," part of the 1990 American Medical Association's series "Profiles of Adolescent Health": serious eating disorders are appearing in girls as young as 11 years; over one million girls between the ages of 12 and 19 years become pregnant each year; adolescent depression is twice as likely to occur in girls than boys, causing one out of five girls to attempt suicide before the age of 20 years; and

WHEREAS, Testimony by Susan McGee Bailey on "Women and K-12 Science and Mathematics Education" before the Subcommittee on Energy of the United States House of Representatives, on June 28, 1994, demonstrates that a girl's confidence level during her teen years impacts her adulthood: girls enter mathematics and science fields far less frequently than boys do, not only because girls receive less encouragement from educators in these areas but because they tend to view mathematics incompetence as personal failure; and

WHEREAS, Research by Lyn Mikel Brown and Carol Gilligan in "Meeting at the Crossroads: Psychology and Girls' Development," 1992, shows that the presence of a caring adult role model is critical to the development of a confident and competent girl; and

WHEREAS, Public awareness of the need for this mentoring is crucial not only to the well-being of girls but to the economic health of our country; and

WHEREAS, The 1993 "Handbook on Women Workers: Trends and Issues," by the Labor Women's Bureau of the United States Department of Labor, shows that in the 21st century most new positions in the work force will be filled by women, and it is in our national interest to invest in today's girls, because our economic future depends on tomorrow's women; and

WHEREAS, In response to these findings, the Ms. Foundation created the National Girls Initiative—Take Our Daughters To Work Day to make girls visible, valuable, and heard; and

WHEREAS, The California Cable Television Association and the LIFETIME Television cable network are actively supporting and taking the electronic media lead in this regard; and

WHEREAS, The Take Our Daughters To Work program is the public education component of this initiative, and will set up an environment in which the public, the media, employers, teachers, and parents can acknowledge girls' intelligence and desire for information, and will allow girls, in the company of a caring adult, to talk with employers about both the gains made by the movements for women's equality and civil rights, and the challenges that lie ahead to diversify the work force; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims Thursday, April 27, 1995, as "Take Our Daughters To Work Day," when mothers, fathers, friends, and relatives are encouraged to take girls ages 9 to 15 years to work with them for a day as a means to spark their vision about their own future in the work force, and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 19

Assembly Concurrent Resolution No. 27—Relative to Child Passenger Safety Week.

[Filed with Secretary of State May 1, 1995.]

WHEREAS, The number one preventable cause of death and injury of children and young adults is the automobile collision; and

WHEREAS, Each year, approximately 200 children under 16 years of age are killed and over 28,000 injured in automobile collisions in California; and

WHEREAS, Up to 71 percent of these children would be alive today if they had been properly restrained in crash-tested car safety seats or safety belts, or both; and

WHEREAS, Infants and young children are not capable of initiating action to use proper restraints and are not protected adequately by automatic safety belts or air bags; and

WHEREAS, Only about 50 percent of the children in this age group are protected by proper restraint use; and

WHEREAS, Crash-tested safety seats are moderately priced and widely available for purchase at retail stores and for rent from low or no cost car safety seat loan programs throughout California; and

WHEREAS, The State of California has enacted laws that require children who are under the age of four years, regardless of weight, or who weigh less than 40 pounds, regardless of age, to be restrained in child safety seats when riding in light trucks and passenger vehicles and that all other occupants use safety belts; and

WHEREAS, The goal of the organization Safety Belt Safe U.S.A. is to further the right of every child to protection from injury or death while being transported in a motor vehicle; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of May 7 through May 13, 1995, is hereby proclaimed Child Passenger Safety Week; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the organization Safety Belt Safe U.S.A.

RESOLUTION CHAPTER 20

Assembly Concurrent Resolution No. 28—Relative to Senior Citizens' Week.

[Filed with Secretary of State May 1, 1995.]

WHEREAS, More than 4 million seniors live in California today, comprising one of the fastest growing segments of our population; and

WHEREAS, Twenty-five percent of California's older population is in our state's labor force and contributing to the growth of the economy; and

WHEREAS, An ever-increasing number of senior citizens volunteer their time to help improve their community and to serve as mentors for younger citizens; and

WHEREAS, A growing number of California's senior citizens are leading active, healthy, physical lifestyles, enabling participation in activities such as the California Senior Olympics, as well as regional and local athletic events; and

WHEREAS, Throughout the state there are an expanding number of organizations and clubs that have been and are being formed by seniors to meet their communities' needs and to maintain their well-being; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of May 7, 1995 to May 13, 1995, inclusive, is proclaimed as Senior Citizens' Week in California and all Californians are urged to honor our state's seniors by participating in activities held throughout the week to commemorate this observance.

RESOLUTION CHAPTER 21

Assembly Concurrent Resolution No. 19—Relative to the Armenian Genocide.

[Filed with Secretary of State May 4, 1995.]

WHEREAS, The Armenian Genocide of 1915 subjected an entire nation to the highest degree of dehumanization, and led 1.5 million people, one-third of the nation's population, to their deaths; and

WHEREAS, On April 24, 1915, intellectuals and physicians were rounded up and executed, and adult males were taken from their homes and slaughtered en masse, leaving the elderly and the women and children without protection, to face the death marches through southern Anatolian deserts in bitter cold and blistering heat without food, water, or shelter; and

WHEREAS, As a result, the land that had been home to the Armenians for nearly 3,000 years was swiftly emptied of its population; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California is honored to commemorate the survival of the Armenian people on the 80th anniversary of the Armenian Genocide; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor and to the Armenian Genocide Commemorative Committee.

RESOLUTION CHAPTER 22

Assembly Concurrent Resolution No. 34—Relative to commemorating the 47th anniversary of the founding of Israel.

[Filed with Secretary of State May 4, 1995.]

WHEREAS, On November 29, 1947, the United Nations General Assembly agreed to divide Palestine and create a Jewish state; and

WHEREAS, The State of Israel came into existence on May 14, 1948, as a homeland for people of the Jewish faith from all parts of the world; and

WHEREAS, Israel has courageously struggled to achieve and maintain statehood; and

WHEREAS, Israel's achievements stand as an important symbol for all nations as we strive for peace and prosperity; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby commemorates the 47th anniversary of the founding of the State of Israel; and be it further

Resolved, That the Chief Clerk of the Assembly shall transmit copies of this resolution to the Governor, the Israeli Ambassador to the United States, and the United States Ambassador to Israel.

RESOLUTION CHAPTER 23

Senate Concurrent Resolution No. 25—Relative to California Bike Commute Day.

[Filed with Secretary of State May 8, 1995.]

WHEREAS, Bicycle commuting is an effective means to conserve energy and reduce pollution; and

WHEREAS, Bicycle commuting promotes the "livability" of communities by reducing traffic noise and congestion; and

WHEREAS, Many businesses have made efforts to help customers and employees commute by bicycle, including the installation of bicycle parking and other commute facilities; and

WHEREAS, Bicycle transportation is an integral part of the "multi-modal" transportation systems planned by federal, state, regional, and local transportation agencies; and

WHEREAS, Local bicycle commuting promotions, often known as "bike-to-work" days, successfully encourage bicycle commuting; and

WHEREAS, The California Bicycle Coalition and the American Lung Association of California have worked cooperatively with many state and local groups and individuals to designate a single day to promote bicycle commuting; and

WHEREAS, The first week in May is Clean Air Week as a part of the American Lung Association of California's efforts to promote air quality; and

WHEREAS, the month of May is National Bike Month, promoting the bicycle as a means of transportation and recreation; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That Thursday, May 4, 1995, is proclaimed to be California Bike Commute Day throughout the state; and be it further

Resolved, That all state agencies are encouraged to participate in California Bike Commute Day by helping to publicize the day, using existing transportation coordinators and programs; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor, air pollution control districts and air quality management districts, councils of government, the California State Association of Counties, and the League of California Cities.

RESOLUTION CHAPTER 24

Senate Concurrent Resolution No. 28—Relative to commemorating the 50th anniversary of Victory in Europe Day.

[Filed with Secretary of State May 8, 1995.]

WHEREAS, The invasion of peaceful European nations by Nazi Germany in 1939 triggered the devastation of World War II; and

WHEREAS, It was Japan and not Germany that ultimately plunged the United States into World War II and the United States joined allied nations to restore the liberty of peace-loving people and the sovereignty of every nation; and

WHEREAS, It began for the United States when it opposed Japan's expansion in southeast Asia and as a consequence cut off important exports to Japan; and

WHEREAS, Japan's military leaders realized that only the United States Navy had the power to block Japan's expansion in Asia and they decided to cripple the United States Pacific fleet with one forceful blow; and

WHEREAS, On December 7, 1941, Japanese aircraft attacked without warning the United States Pacific fleet at anchor in Pearl Harbor in Hawaii which propelled enraged Americans to arms; and

WHEREAS, The United States, Canada, and Great Britain declared war on Japan on December 8, 1941, and Germany and Italy declared war on the United States on December 11, 1941; and

WHEREAS, Churchill, Roosevelt, and Stalin, the leaders of the three major allied powers, were known during World War II as the Big Three and they and their military advisers planned the strategy that eventually defeated the Axis; and

WHEREAS, In January 1943 Roosevelt and Churchill met in Casablanca, Morocco, and the two leaders agreed that Germany was a nearer and more dangerous enemy than Japan and they decided to concentrate on the defeat of Germany first and it was at this

conference that President Roosevelt announced that the Allies would accept only unconditional surrender from the Axis powers; and

WHEREAS, The United States joined the air war against Germany in 1942 and the American B-17 bomber, which carried a better bombsight than British planes, and was known as a flying fortress because of its heavy armor and many guns and because it could take much punishment; and

WHEREAS, American troops first engaged in combat with the Germans in February 1943 in Kasserine Pass in northern Tunisia where at first Rommel defeated the inexperienced Americans in hard fighting but thereafter the Allies steadily closed in and the last Axis forces in northern Africa surrendered in May of that same year; and

WHEREAS, The allied forces planned to invade Sicily after driving the Axis forces out of northern Africa and, under the command of Lieutenant General Dwight D. Eisenhower of the United States, landed along Sicily's south coast on July 10, 1943, and engaged in bitter fighting with German troops for 39 days until the last Germans left Sicily on August 17 and Mussolini fell from power on July 25, 1943, after the invasion of Sicily; and

WHEREAS, Throughout 1943 preparations moved ahead for an invasion of northern France that received the code name "Operation Overlord"; and

WHEREAS, The Allies assembled huge amounts of equipment and great numbers of troops for Operation Overlord and General Eisenhower was selected to command the invasion; and

WHEREAS, During the early morning hours of June 6, 1944, that will be forever remembered as D-Day, the date of the Normandy invasion, 2,700 ships carrying landing craft and 176,000 soldiers crossed the English Channel and at dawn battleships opened fire on the beaches and at 6:30 a.m. troops from the United States, Canada, Britain, and France stormed ashore on a 60-mile front in the largest seaborne invasion in history; and

WHEREAS, At one landing site code-named Omaha Beach, United States troops came under heavy fire and barely managed to stay ashore but nevertheless all five allied landing beaches were secure by the end of D-Day; and

WHEREAS, The United States 3rd Army under Lieutenant General George S. Patton rolled eastward towards Paris and despite Hitler's order that the city be destroyed, American and Free French forces liberated Paris on August 25, 1944; and

WHEREAS, Hitler's resources were failing, yet on December 16, 1944, German troops surprised and overwhelmed Americans in the Ardennes Forest in Belgium and Luxembourg, but within two weeks the Americans stopped the German advance near the Meuse River in Belgium in what is known as the Battle of the Bulge; and

WHEREAS, The Allies began their final assault on Germany in early 1945 when Soviet soldiers reached the Oder River just east of

Berlin and Allied forces in the west occupied positions along the Rhine; and

WHEREAS, British and Canadian forces cleared the Germans out of the Netherlands and swept into northern Germany while American and French forces raced toward the Elbe River in central Germany and despite Hitler's order to his soldiers to fight to the death, large numbers of Germans surrendered each day; and

WHEREAS, As the Allies advanced they discovered horrifying evidence of Nazi brutality towards millions of Jews and other minority groups who had been murdered or imprisoned in concentration camps and the starving survivors of those camps gave proof of the terrible suffering of those who had already died; and

WHEREAS, The capture of Berlin, then Germany's capital, was left to Soviet forces and by April 25, 1945, Soviet troops had surrounded the city and from a bunker deep underground Hitler ordered German soldiers to fight on, but committed suicide himself on April 30, 1945; and

WHEREAS, On May 7, 1945, Colonel General Alfred Jodl, Chief of Staff of the German armed forces signed a statement of unconditional surrender at Eisenhower's head quarters in Reims, France ending World War II in Europe; and

WHEREAS, The Allies declared May 7, 1945, as V-E Day, or Victory in Europe Day proving that the allies did not suffer or die in vain after six long years of fighting; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature does hereby proclaim May 7, 1995, as the 50th Anniversary of V-E Day and urges all Californians to join in ceremonies to commemorate this major historic event; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor of California, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 25

Assembly Concurrent Resolution No. 12—Relative to Neighborhood Watch Month.

[Filed with Secretary of State May 9, 1995.]

WHEREAS, California's communities recognize Neighborhood Watch as an effective means for keeping crime out of neighborhoods; and

WHEREAS, Neighbors and law enforcement agencies working together create an effective crime-fighting team; and

WHEREAS, Every three seconds a residence is victimized by crime; and

WHEREAS, Much remains to be done to ensure the safety of our homes, our neighborhoods, and our communities for ourselves and our children; and

WHEREAS, The battle against crime will not be won by individuals acting on their own; and

WHEREAS, Neighborhood Watch teaches children respect for the law, reinforces community values, and encourages the kind of individual responsibility that makes for healthy, creative neighborhoods populated by safer and happier citizens; and

WHEREAS, In Neighborhood Watch programs, neighbors are on guard for criminal activity that may occur near their homes, report suspicious activity to the police, and provide escorts for elderly or vulnerable citizens; and

WHEREAS, The growth of Neighborhood Watch programs is truly encouraging; and

WHEREAS, Because of the significance and scope of Neighborhood Watch programs in making neighborhoods safe, it is important that the State of California recognize the many contributions of the residents of this state and of law enforcement officers; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the month of August 1995, be declared Neighborhood Watch Month and that on the occasion of Neighborhood Watch Month, the Legislature of the State of California commends those California residents who have participated in Neighborhood Watch programs for their distinguished service to their communities by uniting with their neighbors and law enforcement to keep their neighborhoods safe, and encourages all Californians to join in this effective means of fighting crime in their neighborhoods.

RESOLUTION CHAPTER 26

Senate Concurrent Resolution No. 31—Relative to Autism Treatment Awareness Week.

[Filed with Secretary of State May 10, 1995.]

WHEREAS, Autism is a physical disorder of the brain that can cause a lifelong developmental disability; and

WHEREAS, In the United States there are at least 360,000 people with autism, one-third of whom are children; and

WHEREAS, The diagnosis and treatment of autism may require assessment and intervention by a multidisciplinary team of experts; and

WHEREAS, The early intervention behavior analysis program developed over the past 30 years by Dr. Ivar Lovaas at the University of California at Los Angeles has shown that a program of intensive early intervention treatment that focuses on a multidisciplinary approach relying in large part on family and community participation produces a positive outcome; and

WHEREAS, Current research being conducted into the biological causes and treatment regimens for autism are showing great promise and therefore should be encouraged and supported; and

WHEREAS, The lifelong tireless work of dedicated professionals and parents, including Dr. Bernard Rimland and others, are energizing the medical and behavioral science community to find the cause and cure for autism; and

WHEREAS, Family based organizations such as the Sacramento area Families for Early Autism Treatment (FEAT) provide invaluable resources and support for autistic children and their families; and

WHEREAS, Additional special education teachers and curriculum for autistic children are needed and would ultimately reduce the risk of institutionalization of autistic children; and

WHEREAS, Parental involvement, community integration, early intervention, increased acceptance of children with special needs, and systematic treatment are all key components that would make a more favorable future likely for children with autism; and

WHEREAS, Heightened awareness and education about autism would help to achieve these components; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims the week of June 4 through June 10, 1995, as Autism Treatment Awareness Week, and acknowledges the contribution made in the area of early autism intervention treatment by experts in the field as well as the families involved; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the State Department of Developmental Services, Area Board III, the State Department of Education, Local Chapters of the Autism Society, Regional Centers, the Association of Regional Center Agencies, Protection and Advocacy, Dr. O. Ivar Lovaas, Dr. Bernard Rimland, the California School Boards Association, and the Developmental Disabilities Council.

RESOLUTION CHAPTER 27

Assembly Joint Resolution No. 7—Relative to manufactured housing.

[Filed with Secretary of State May 12, 1995.]

WHEREAS, Manufactured homes constructed pursuant to the National Manufactured Housing Construction and Safety Standards Act provide an important source of nonsubsidized affordable housing to Californians; and

WHEREAS, The State of California is a national leader in efforts to encourage and expand the use of manufactured housing by eliminating unnecessary regulatory barriers and by developing and encouraging innovative land use and financing policies; and

WHEREAS, The State of California has deemed manufactured homes a permitted use in all residential zoning districts, subject to the same development standards applicable to other dwellings in that zoning district; and

WHEREAS, Construction and safety standards for manufactured homes are established in federal law and regulation and all such standards preempt local and state codes; and

WHEREAS, The federal Manufactured Home Construction and Safety Standards have been determined by the State of California to meet or exceed performance standards established for other dwellings; and

WHEREAS, Federal law requires every federally certified manufactured home to be constructed on a chassis which must remain a permanent feature of the home's substructure; and

WHEREAS, The chassis is not necessary for the home's structural integrity if the home is sited on a permanent foundation and the home's floor system is designed to accommodate appropriate design loads; and

WHEREAS, This mandatory feature represents an unnecessary regulatory barrier to greater design flexibility for manufactured homes; and

WHEREAS, This regulatory barrier prevents innovative uses of manufactured homes to meet the demand for affordable housing in California; and

WHEREAS, This regulatory barrier prevents manufactured home producers from developing a recycling program for chassis systems which could save consumers between $1,000 and $2,000 per home; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to amend the definition of "manufactured home" in federal law to allow such homes to be designed to accommodate a removable chassis, so

long as the home is intended to be permanently sited on a foundation and so long as the floor system is designed to accommodate appropriate design loads; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to each member of the House Committee on Banking, Housing, and Financial Services, the Senate Committee on Banking and Urban Affairs, and the House and Senate appropriations subcommittees on HUD/VA and independent agencies.

RESOLUTION CHAPTER 28

Assembly Concurrent Resolution No. 36—Relative to commending the achievements of Jack Valenti.

[Filed with Secretary of State May 12, 1995.]

WHEREAS, Jack Valenti has distinguished himself as a valiant patriot, successful entrepreneur, special assistant to the President of the United States, and leader of the film industry in a career that spans nearly 60 years, and has done so while earning the unanimous respect, loyalty, and friendship of studio heads, film assistants, and heads of state, from Hollywood to Washington, D.C., for which he is deserving of the heartiest congratulations from the State of California; and

WHEREAS, Mr. Valenti, after flying 51 combat missions as a pilot of a B-25 attack bomber for the 12th Air Force in Italy during World War II, and after earning a bachelor's degree from the University of Houston and a master's degree in business administration from Harvard University, and after founding a successful advertising and political consulting agency, moved to Washington, D.C., and worked for President John F. Kennedy, and eventually ascended to be one of the closest personal advisers to President Lyndon B. Johnson; and

WHEREAS, In 1966, the heads of several film studios recruited Mr. Valenti to become only the third person to hold the title of President and Chief Executive Officer of the Motion Picture Association of America, and he stipulated in his contract that the President of the United States could call on his service at any time; and

WHEREAS, In 1968, Mr. Valenti built a consensus among film studio heads and created the voluntary movie rating system and adjusted it throughout the years to allow parents to have advance information about movies so they can decide which movies they want their children to see; and

WHEREAS, Committed to the capitalist system through his role as President of the Motion Picture Association of America for the past 30 years, Jack Valenti has minimized trade barriers and successfully gained access to foreign markets for American films, television shows, and video products; and

WHEREAS, He has contributed greatly to the community, through active fundraising efforts for the Motion Picture and Television Home, Los Angeles Chapter to Prevent Blindness, Boys & Girls Clubs of America, and Washington's Woodley House which provides community-based psychiatric care, and through his service as a member of the Board of Directors of the American Film Institute and as Chairman of the Capital Campaign Committee to raise funds for the Franklin Delano Roosevelt Memorial; and

WHEREAS, Colleagues universally praise Mr. Valenti as an honest and loyal friend who is gracious to everyone in a business where manners are sometimes forgotten, and whose impeccable fashion sense and baroque style of speaking are legendary; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That Jack Valenti be honored and commended for his outstanding contributions to public service in this nation and his leadership of the film industry—one of this state's greatest trade assets, returning to this country some $4 billion every year in surplus balance of trade, and his special attention and hands-on approach to issues and concerns of the people of the State of California; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to Jack Valenti.

RESOLUTION CHAPTER 29

Assembly Concurrent Resolution No. 9—Relative to state tourism.

[Filed with Secretary of State May 17, 1995.]

WHEREAS, The State of California has a $54 billion a year tourism industry; and

WHEREAS, The tourism industry is present in all areas of the state, including: Yosemite National Park, San Francisco, Los Angeles, Lake Tahoe, the scenic Pacific coastline, the Mojave Desert, the Central Valley, the Sierra Nevada mountain range, Catalina Island, and San Diego; and

WHEREAS, The tourism industry in California supports local businesses and cities throughout the state, increasing revenues for vital services, bringing a needed flow of money into the state, and provides revenue to a wide variety of California businesses; and

WHEREAS, The state's tourism industry provides significant employment opportunities to the state's residents and to its supportive industries; and

WHEREAS, The State Legislature should make every effort to encourage the promotion of California tourism and the attraction of tourists to the state; and

WHEREAS, The promotion of state tourism may help to provide additional revenue to California businesses and cities; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims 1995 to be State Tourism Year, welcoming and encouraging tourism to the state and supporting local efforts promoting this measure; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 30

Assembly Joint Resolution No. 29—Relative to the stealth bomber.

[Filed with Secretary of State May 17, 1995.]

WHEREAS, The Congress of the United States is expected to consider funding for additional Air Force B-2 Stealth Bombers beyond the 20 currently authorized; and

WHEREAS, International challenges persist, and the availability of stealth bomber technology will enable the Air Force to respond quickly and decisively; and

WHEREAS, The United States' ability to respond effectively would be greatly undermined if the Air Force's current fleet of bombers is allowed to become obsolescent; and

WHEREAS, According to the 1995 defense appropriations bill, "Independent studies have concluded that the 20 B-2 aircraft currently on order are simply not enough to provide a militarily-significant and cost-efffective long-range conventional bomber force ..."; and

WHEREAS, The B-2 is the only aircraft currently in production that incorporates advanced stealth technology, developed in California, that unlike the current fleet of bombers, gives the United States superiority over any adversary in the world; and

WHEREAS, The B-2 program employees 9,000 people in California at Northrop Grumman Corporation, the prime contractor, and more than 2,000 suppliers throughout the state, and helps support thousands of additional jobs at local businesses; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the B-2 Stealth Bomber is acknowledged as a key

element of the military strategy for the defense of the United States; and be it further

Resolved, That the Legislature of the State of California respectfully urges the President and the Congress of the United States to provide the necessary funding in the 1996 fiscal year for additional production of the Air Force B-2 Stealth Bomber, an important national resource; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 31

Senate Concurrent Resolution No. 35—Relative to State Highway Route 37.

[Filed with Secretary of State May 26, 1995.]

WHEREAS, During the last five years, 28 people have lost their lives in traffic accidents on State Highway Route 37 in the Counties of Solano and Sonoma; and

WHEREAS, Almost 800 people have been injured in traffic-related incidents on this highway; and

WHEREAS, This highway, from the Mare Island Bridge to the intersection with State Highway Route 121, varies in width between two and three lanes; and

WHEREAS, This highway is on an elevated stretch of land that is bounded on both sides by highly sensitive wetlands, and the construction of a new or widened highway is not fiscally feasible at this time; and

WHEREAS, Much of this highway is constructed with narrow shoulders, and the highway drops sharply into areas that are continuously submerged; and

WHEREAS, Cross-median (head on) accidents have been responsible for every one of the 28 deaths of motorists on State Highway Route 37 over the last five years; and

WHEREAS, The Department of Transportation has developed set formulas that warrant the use of median barriers on freeways, which, if applied to State Highway Route 37, would warrant the installation of these barriers; and

WHEREAS, In addition to jeopardizing the at-fault motorists, cross-median accidents jeopardize innocent motorists and passengers in opposing lanes; and

WHEREAS, The department's own documents indicate that the highway may pose a danger to its employees; and

WHEREAS, The physics of cross-median accidents creates significantly more force than accidents involving median barriers and therefore greatly increases the potential of serious injuries and fatalities; and

WHEREAS, The state has a responsibility to the 28,000 motorists who travel State Highway Route 37 daily; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature strongly recommends that median barriers be installed on State Highway Route 37 between the intersection with State Highway Route 121 and the Mare Island Bridge; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 32

Assembly Concurrent Resolution No. 31—Relative to commemorating the centennial anniversary of the founding of the chiropractic profession.

[Filed with Secretary of State May 31, 1995.]

WHEREAS, The chiropractic profession was founded on September 18, 1895, by Daniel David Palmer in Davenport, Iowa, and will therefore celebrate its centennial anniversary on September 18, 1995; and

WHEREAS, The profession of chiropractic is now practiced by doctors of chiropractic throughout the world, including 50,000 in the United States and over 10,000 in this state; and

WHEREAS, Contemporary standards in chiropractic education, research, and practice have led to ever broadening effectiveness and acceptance of the benefits of chiropractic health care by the public and by the health care community; and

WHEREAS, Each year millions of Americans choose chiropractic health care for the restoration and maintenance of their health by natural methods and without the use of drugs or surgery; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the significant contributions that the chiropractic profession has made to the health and welfare of the citizens of this state are hereby acknowledged, and that the year of 1995 is hereby commemorated as the centennial anniversary of the founding of the chiropractic profession; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the author for distribution.

RESOLUTION CHAPTER 33

Assembly Concurrent Resolution No. 35—Relative to Water Awareness Month.

[Filed with Secretary of State May 31, 1995.]

WHEREAS, Water is California's most precious natural resource and every effort should be made to conserve its usage and ensure that adequate supplies are available; and

WHEREAS, The drought years of 1987–1993 taught Californians the importance of conserving water for the health and welfare of the state; and

WHEREAS, Residents, local governments, and businesses have successfully decreased the use of water in California through a variety of conservation efforts and programs; and

WHEREAS, All Californians must continue to conserve water and to use water wisely, and to be made aware of the policies and practices that promote water conservation; and

WHEREAS, Water conservation is an ongoing process that must give rise to lifetime habits in order to be fully successful; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby designates May 1995 as Water Awareness Month, joining the Governor, the California Water Awareness Campaign, and numerous cities, agencies, and other organizations in this designation, to promote an understanding of water conservation and make water conservation a way of life; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 34

Senate Concurrent Resolution No. 37—Relative to Joint Rule 28.5.

[Filed with Secretary of State June 5, 1995.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That Joint Rule 28.5 is added to the Joint Rules of the Senate and Assembly for the 1995–96 Regular Session, to read:

Conference Committee on Budget Bill

28.5. This rule governs any committee on conference on any Budget Bill for the 1995–96 fiscal year and shall be repealed upon the enactment of the Budget Act of 1995. Joint rules adopted for the 1993–94 Regular Session that govern committees on conference on the Budget Bill shall apply to any committee on conference on any Budget Bill for the 1995–96 fiscal year to the extent that they are not inconsistent with this rule.

The committee on conference shall be composed of four Senators appointed by the Senate Committee on Rules and four Members of the Assembly, appointed by the Speaker of the Assembly, who shall be the Chairperson and Vice Chairperson of the Assembly Committee on Appropriations and the Chairperson and Vice Chairperson of the Assembly Committee on Budget. Joint Rule 28.1 shall not apply to the appointment of the members of the committee. It shall require an affirmative vote of no fewer than three Senators and three Members of the Assembly to decide any change relating to the content of the report, to agree upon a report, or to find and determine that the committee is unable to submit a report.

If either house refuses to adopt a report of a committee on conference, a new committee on conference shall be appointed. Notwithstanding Joint Rule 29, the conferees from the Assembly shall be the same members who were appointed to the earlier committee. The conferees from the Senate shall be four Senators appointed by the Senate Committee on Rules who, notwithstanding Joint Rule 29, may be the same Senators who were appointed to the earlier committee.

Notwithstanding subdivision (c) of Joint Rule 29.5, the committee on conference may consider or approve any item of expenditure or control, without limitation.

RESOLUTION CHAPTER 35

Assembly Joint Resolution No. 15—Relative to the Tijuana River International Wastewater Treatment Plant.

[Filed with Secretary of State June 14, 1995.]

WHEREAS, Due to chronic failures of the sewage system that serves the City of Tijuana, in Baja California, Mexico, large amounts of untreated wastewater flow into the Tijuana River and its tributaries and across the international border into the San Diego area of this state; and

WHEREAS, The flows of untreated wastewater often contain toxic contaminants because Mexico does not require the pretreatment of

industrial waste and thus pose a threat to both public health and the ecosystems of the Tijuana River estuary and beaches located near the mouth of the river; and

WHEREAS, To address those issues, in July, 1990, the federal government and the Mexican government signed Minute 283, calling for a conceptual plan for an international solution to the border sanitation problem in San Diego, California and Tijuana, Baja California; and

WHEREAS, The two governments agreed in Minute 283 to the creation of an international wastewater treatment plant, to be constructed on the southwest bank of the Tijuana River on the United States side of the border, that will be capable of treating twenty-five million gallons of untreated wastewater per day and is to be funded and supervised by the both the United States and Mexico, through the United States section of the International Boundary and Water Commission; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to move with all deliberate speed, and take all necessary steps, to complete the construction of the International Wastewater Treatment Plant on the Tijuana River near San Diego as soon as possible; and be it further.

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 36

Assembly Joint Resolution No. 27—Relative to the Civilian Health and Medical Program of the Uniformed Services.

[Filed with Secretary of State June 19, 1995.]

WHEREAS, California is proud to be the home of millions of active and retired military personnel; and

WHEREAS, These personnel and their families have earned the right to have access to quality health care because of distinguished service to our state and country; and

WHEREAS, This quality health care is to be delivered through the Civilian Health and Medical Program of the Uniform Services (CHAMPUS) program; and

WHEREAS, These personnel and their families have already been seriously inconvenienced by the actions of the federal government

in closing many of the military bases where they customarily received their medical care, forcing them to travel great distances to receive medical care from different providers; and

WHEREAS, These personnel and their families were again inconvenienced by the action of the federal government in changing the administration of the CHAMPUS program last year. These changes required some of these military and veteran families to change medical providers, and to travel greater distances to receive medical care; and

WHEREAS, The Federal government is contemplating making even further major changes to the CHAMPUS program. These changes will cause dislocation in the provider networks that will require that military families endure a stressful transition to new doctors and providers; and

WHEREAS, Many of these changes will result in fewer medical providers available to families which will adversely affect medical quality; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the United States Department of Defense to make every effort to ensure that the commitment made to provide medical benefits to our military and veteran families through the CHAMPUS program be honored, and that when changes are contemplated for the program that priority be given to protecting the benefits of military and veteran families by ensuring that quality medical care is available at convenient locations for these families, and in doing this, that the Department of Defense take into consideration the impact and the dislocation caused to military and veteran families by previous changes to the program and that any future changes be designed to minimize further dislocation and to enhance the CHAMPUS program rather than to reduce the benefits already earned by our military; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to the Secretary of Defense, to the Director of the Office of Management and Budget, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 37

Assembly Joint Resolution No. 3—Relative to the United States Geological Survey.

[Filed with Secretary of State June 20, 1995.]

WHEREAS, The internationally respected United States Geological Survey has been proposed for possible elimination; and

WHEREAS, The United States Geological Survey traces its history back to 1879 when Congress created an agency to identify natural hazards and locate natural resources; and

WHEREAS, The United States Geological Survey counts among its former directors John Wesley Powell, the explorer who made the first boat trip down the Colorado River through the Grand Canyon; and

WHEREAS, The loss of the United States Geological Survey would seriously damage the nation's efforts to improve water quality, prevent landslides, locate minerals, and identify unsafe construction sites and suitable toxic waste disposal sites; and

WHEREAS, Geologists with the United States Geological Survey have contributed to efforts by engineers and urban planners to revise building codes to improve earthquake preparedness; and

WHEREAS, The National Weather Service issues flood advisory warnings based on information from the United States Geological Survey; and

WHEREAS, The volcanic activity monitoring of the United States Geological Survey resulted in, for example, the early warning of the impending eruption of Mount Pinatubo in the Philippines which caused the evacuation of Clark Air Force Base and saved thousands of lives; and

WHEREAS, The United States Geological Survey provides approximately 1,500 jobs in California, primarily in Menlo Park, Pasadena, and Sacramento; and

WHEREAS, The state's flood, earthquake, and volcanic monitoring programs all depend on information from the automated instrument networks maintained by the United States Geological Survey to protect the public's safety; and

WHEREAS, The state's water agencies rely on the United States Geological Survey's water resources division—the agency's largest single program—to compile data that serve as the basis for flood forecasting and water distribution statewide; and

WHEREAS, The budget of the United States Geological Survey has remained static for years and, was cut by $13.2 million this year, and the agency has already been ordered to cut its staff by 12 percent by 1999; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress to not eliminate the United States Geological Survey; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each

Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 38

Assembly Concurrent Resolution No. 21—Relative to the 75th Anniversary of the League of Women Voters.

[Filed with Secretary of State June 20, 1995.]

WHEREAS, In the year 1920, women had been fighting for decades for the right to vote, and once they won that right, believed they had a responsibility to participate in public debate, and to educate voters about the important issues of the day; and

WHEREAS, On February 14, 1920, at the final convention of the National American Woman Suffrage Association in Chicago, the League of Women Voters was born, in anticipation of the ratification of the 19th Amendment to the United States Constitution, which would provide a constitutional guarantee of a woman's right to vote; and

WHEREAS, The League is a nonpartisan organization that has fought for a wide variety of issues, from free trade and the creation of the United Nations to civil rights and compulsory public education; and

WHEREAS, Other causes the League has championed include lend-lease aid to Britain during World War II, education programs to counter Senator Joe McCarthy's attacks on civil liberties, civil rights and antipoverty laws, resumption of United States relations with China, nuclear arms control, environmental regulation, free trade treaties, workplace laws protecting women and children, the minimum wage, and unpaid family leave for workers; and

WHEREAS, Following World War II, the League was a major leader in the effort to establish the United Nations, was one of the first organizations in this country to be recognized by the United States as a nongovernmental organization (NGO), and is still considered an NGO with official observer status; and

WHEREAS, The League continues to battle in the halls of Congress for campaign finance reform, United States support of emerging democracies and universal health care; and

WHEREAS, The League may best be known for its sponsorship of political debates, and providing voters with a nonpartisan, issue-oriented forum from which they may make informed decisions; and

WHEREAS, The League has 1,100 chapters and 90,000 members nationwide; and

WHEREAS, The commitment of its members has transformed the League of Women Voters from "the mighty political experiment" that began in 1920, when it was designed to help 20 million newly enfranchised women carry out their voting responsibilities, to what it is today: a unique, nonpartisan organization of men and women recognized as a force in molding political leaders, shaping public policy, and promoting informed citizen participation at all levels of government; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the people of California hereby recognize the important and unique contributions of the League of Women Voters during its 75th-year history as a nonpartisan educational organization dedicated to increasing voter awareness and participation.

RESOLUTION CHAPTER 39

Senate Concurrent Resolution No. 4—Relative to the Italian Region of Umbria.

[Filed with Secretary of State June 21, 1995.]

WHEREAS, The Italian Region of Umbria and the State of California share many geographic, agricultural, and economic similarities, such as moderate climate, a beautiful landscape, active seismic belts, extensive forests, an important agricultural sector, a strong level of tourism, and an important winemaking industry; and

WHEREAS, The central location of the Region of Umbria in the Italian peninsula, as well as its interconnection via railways, motorways, and airways give the Region of Umbria access to the rest of the Italian peninsula and to the Adriatic and Tyrrhenian Seas, and have earned it the nickname of the "green heart of Italy"; and

WHEREAS, A sister state relationship between California and the Italian Region of Umbria would facilitate the exchange of environmental protection information and other scientific and technical knowledge, especially in the field of earthquake preparedness, and would provide a forum for sharing legislative solutions; and

WHEREAS, A sister state relationship would promote mutual trade and commerce, and increase the potential for commercial relationships between small, medium, and large companies in California and the Italian Region of Umbria; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California, on behalf of the people of California, extends to the people of the Italian Region of Umbria an invitation to join with California in a sister state

relationship in order to encourage and facilitate mutually beneficial educational, economic, and cultural exchanges and to lead to a more indelible and lasting relationship between Californians and the citizens of the Region of Umbria; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Regional Council of the Italian Region of Umbria, to the Mayor of Perugia, to the Governor of California, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 40

Senate Concurrent Resolution No. 19—Relative to family values and the entertainment industry.

[Filed with Secretary of State June 21, 1995.]

WHEREAS, The motion picture industry and television programs play an important role in shaping the lives, opinions, and values of our young people; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Motion Picture Association of America and the Alliance of Motion Picture and Television Producers, the major television networks known as ABC, CBS, NBC, and FOX, the cable television networks, including CNN, MTV, and the local Hispanic stations, are hereby requested to accept some of the responsibility for taking positive steps to reverse the current trends of sexual promiscuity and violence by adopting programming that assists with these goals; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Motion Picture Association of America and the Alliance of Motion Picture and Television Producers, the major television networks known as ABC, CBS, NBC, and FOX, the various cable television networks, including CNN, MTV, and the local Hispanic stations.

RESOLUTION CHAPTER 41

Senate Joint Resolution No. 12—Relative to Section 8 housing assistance.

[Filed with Secretary of State June 21, 1995.]

WHEREAS, Section 8 housing assistance is made available from the United States Department of Housing and Urban Development

(HUD) through California local government housing agencies to assist in rental payments for persons of lower income; and

WHEREAS, Section 8 housing assistance has heretofore been made available to assist lower income families and individuals, including senior citizens and the disabled, in helping them pay part of manufactured home and mobilehome park space rent; and

WHEREAS, HUD has proposed rule changes to the Section 8 housing assistance payments program for fiscal year 1995 for manufactured home spaces to be established at 30 percent of the applicable Section 8 Rental Certificate program two-bedroom fair market rent; and

WHEREAS, The proposed HUD rule changes would establish a formula that would permit space rent in many counties to be not more than $207 in order for lower income persons to be eligible for the Section 8 assistance; and

WHEREAS, In San Diego County alone, the current average mobilehome space rent of mobilehome applicants awaiting Section 8 assistance is more than $325; and

WHEREAS, Under the proposed rule changes many lower income senior citizens, families, and disabled persons living in mobilehome parks in a number of California counties will no longer qualify for assistance; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to support modification of the proposed rule changes to the proposed Section 8 formula relating to manufactured home and mobilehome space rent, or to enact urgency legislation to clarify that persons receiving Section 8 assistance for manufactured home and mobilehome space rent be treated no differently under the HUD rules than recipients of Section 8 assistance living in other types of rental housing, or to at least provide a more realistic formula in recognition of higher manufactured housing space rents in more populous California counties; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States, and to the Secretary of Housing and Urban Development.

RESOLUTION CHAPTER 42

Assembly Joint Resolution No. 28—Relative to the auction of radio frequency spectrum.

[Filed with Secretary of State June 26, 1995.]

WHEREAS, The future success of California's economy and the future welfare of its citizens rests upon its ability to increase the employment skills and competitiveness of its people and to stimulate economic growth; and

WHEREAS, The improvement of California's employment capabilities and competitiveness of its people requires high quality education supported by an advanced telecommunications and information infrastructure; and

WHEREAS, Increases in the productivity and competitiveness of California's education and public library system are essential to upgrading the quality of the existing education system; and

WHEREAS, The development of an advanced state-of-the-art telecommunications and information infrastructure, utilizing modern information processing technology in California's education and library system, linked locally, nationally, and internationally to businesses, residences, and other public and private services, is essential for achieving a quality educational system in a cost-effective manner; and

WHEREAS, The development of an advanced state-of-the-art telecommunications infrastructure in California is essential to promoting the economic competitiveness of the state, improving the literacy and employment skill level of its citizens, and ensuring the future vitality of its educational and library systems; and

WHEREAS, California must ensure that the state benefits from telecommunications infrastructure advances and ensure universal access to information and education resources for all residents of the state; and

WHEREAS, California must assume a position of economic leadership and national prominence in the information age by funding school and library information infrastructure in a manner which is technology and provider neutral; and

WHEREAS, California will attain a superior technology and provider neutral school and public library information and telecommunications infrastructure by utilizing and integrating, on a nondiscriminatory basis, the technology and services of numerous state-of-the-art providers; and

WHEREAS, Current funding mechanisms may not provide California's schools and public libraries with the funds needed to construct the infrastructure necessary to take advantage of telecommunications technologies and services, to purchase those services, or to provide the education, training, and information needs they are intended to serve; and

WHEREAS, The current Congress has expressed its belief in the concept that the individual states are better able to determine their individual needs and are better positioned to determine how moneys should be spent to address those needs; and

WHEREAS, The Federal Communications Commission is charged with the responsibility of administering the radio frequency

spectrum as a national asset for the benefit of the American public; and

WHEREAS, The Federal Communications Commission is currently conducting an auction of radio spectrum that will be used by winners of that auction to provide personal communications services; and

WHEREAS, The Federal Communications Commission auction has generated moneys in excess of seven billion dollars which is approximately three billion dollars more than the approximately four billion dollars that has been earmarked for budget deficit reduction, and that this approximately three billion dollars should be shared with the individual states so that they may accelerate development of their telecommunications infrastructure by using public institutions such as schools and public libraries as catalysts; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Congress of the United States enact whatever laws are necessary to allow each state to share in the proceeds of the current Federal Communications Commission auction of radio spectrum for purposes of funding their schools' and public libraries' telecommunications and information infrastructure; and be it further

Resolved, That revenues received as a result of this resolution be efficiently expended in a technology and provider neutral manner using California's schools and public libraries as catalysts to accelerate the development of the state's telecommunications and information infrastructure; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 43

Senate Concurrent Resolution No. 3—Relative to the Oakland Museum of California.

[Filed with Secretary of State June 26, 1995.]

WHEREAS, The Oakland Museum of California is committed to the development of exemplary collections, exhibitions, and educational services that promote public understanding of California's magnificent environment, history, and art, and is responsive, accessible, and relevant to the state's diverse and multicultural populations; and

WHEREAS, Since its inception in 1969, the museum has focused solely on collecting, interpreting, and exhibiting natural history specimens, historical artifacts, and artworks from or relating to California; and

WHEREAS, No other museum or academic institution in the state has as its mission addressing the three disciplines of natural science, history, and art from the state; and

WHEREAS, The museum engages in cooperative projects to share exhibitions and educational curricula with other museums in communities throughout the state; and

WHEREAS, The museum celebrated its 25th anniversary in 1994; and

WHEREAS, The museum seeks to sustain its activities in its home City of Oakland and expand its involvement with communities throughout the state; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California recognizes the Oakland Museum of California for creating an innovative, educational museum with collections, exhibitions, and programs over the past 25 years, and for its mission to increase its role for all people to discover and explore the majestic wonders of California's environment, history, and art; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor, the Board of Supervisors of Alameda County, the Mayor of Oakland, and the Oakland Museum of California.

RESOLUTION CHAPTER 44

Senate Joint Resolution No. 19—Relative to Gulf War veterans.

[Filed with Secretary of State June 26, 1995.]

WHEREAS, The American Legion estimates that more than 20,000 Persian Gulf War veterans are suffering from "Gulf War illness" that is an affliction involving various undiagnosed, chronic ailments with symptoms that include fatigue, skin problems, headaches, muscle pain, joint pain, neurological symptoms, neuropsychological symptoms, respiratory system symptoms, sleep disturbances, gastrointestinal symptoms, cardiovascular symptoms, abnormal weight loss, and menstrual disorders; and

WHEREAS, There is evidence that Persian Gulf War participants were exposed to chemical and biological warfare agents, chemical and biological warfare pretreatment drugs, and other hazardous materials and substances that are being linked to the symptoms of "Gulf War illness"; and

WHEREAS, There is also evidence that spouses and other family members of Persian Gulf War veterans are experiencing health problems related to "Gulf War illness"; and

WHEREAS, In November 1994 Congress enacted the Persian Gulf War Veterans' Act authorizing the Department of Veterans Affairs to compensate any Persian Gulf War veteran suffering from a chronic disability resulting from an undiagnosed illness or combination of undiagnosed illnesses that became manifest either during active duty in the Southwest Asia theater of operations or within a certain period following service in that area during the Persian Gulf War; and

WHEREAS, Despite mounting evidence that illnesses suffered by many Persian Gulf War veterans are service connected, many of the medical complaints of these veterans have yet to be diagnosed as service connected; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to take action to, as soon as possible, identify and locate those veterans of the Persian Gulf War that may be suffering from "Gulf War illness," and make adequate federal funds available for research on "Gulf War illness" and for full medical treatment for all of those veterans suffering from "Gulf War illness," particularly those veterans who have chronic disabilities resulting from military service during the Persian Gulf War; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Administrator of Veterans Affairs.

RESOLUTION CHAPTER 45

Senate Concurrent Resolution No. 11—Relative to the Altai Republic of the Russian Federation and the State of California.

[Filed with Secretary of State June 29, 1995.]

WHEREAS, The Administration of the Altai Republic of the Russian Federation has approached the State of California for recognition as a sovereign democratic state within the Russian Federation based on the right of the people for self-determination; and

WHEREAS, The government leaders of the Altai Republic are reform-minded and have demonstrated a commitment to improving the standard of living for its citizens and increasing relations internationally; and

WHEREAS, The government leaders of the Altai Republic have expressed interest in forging a formalized means of exchanging cultural, environmental, economic, and other information specifically between their republic and the State of California; and

WHEREAS, Various California governmental authorities, as well as private industry, have made inquiries for strengthening ties between California and the Altai Republic; and

WHEREAS, A sister state relationship between California and the Altai Republic would facilitate the exchange of environmental protection information and other cultural knowledge; and

WHEREAS, A sister state relationship would foster increased economic opportunities between California industry and the Altai Republic; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature encourages the establishment of programs for a sister state relationship between the Altai Republic of the Russian Federation and the State of California that will facilitate the exchange of cultural and environmental information, and ultimately promote mutual international trade and commerce; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Secretary of Trade and Commerce.

RESOLUTION CHAPTER 46

Assembly Joint Resolution No. 40—Relative to military base closures.

[Filed with Secretary of State June 30, 1995.]

WHEREAS, The most recent base closure and realignment recommendations forwarded to the President by the federally-appointed Defense Base Realignment and Closure Commission now include an additional 20 California defense facilities; and

WHEREAS, Presidents Franklin D. Roosevelt, John F. Kennedy, and Ronald Reagan led the charge in rebuilding American's defenses in the 20th Century and in practicing a policy of "peace through strength"; and

WHEREAS, The fruits of this policy were realized with the collapse of the Soviet empire, America's victory in the Cold War, and the military's stunning victory in the Persian Gulf War; and

WHEREAS, Americans have a profound respect for the men and women of the United States military who faithfully serve the country; and

WHEREAS, We believe that, if the men and women of the military are sent into harm's way, they must be equipped with whatever is necessary to ensure their safety and to get the job done; and

WHEREAS, The world remains a dangerous place, with military involvements recently in Iraq, Haiti, and now Bosnia, and the maintenance of our defenses should be a top priority; and

WHEREAS, Downsizing and streamlining military operations are important goals—but only as long as the security of the United States is not compromised; and

WHEREAS, The bases in California, especially McClellan Air Force Base and the Long Beach Naval Shipyard, are vital national assets on the Pacific Rim; and

WHEREAS, It was recently learned that technology from McClellan Air Force Base was used in the rescue of downed Air Force pilot Scott O'Grady in Bosnia; and

WHEREAS, The radio beacon and transmitter, as well as the E3A AWACS aircraft equipment and radio communication system used by O'Grady and his rescuers, were repaired and serviced at McClellan Air Force Base; and

WHEREAS, California has been forced to endure up to 50 percent of all national economic impact from base closures; and

WHEREAS, The closure of these California facilities would represent direct and indirect job losses of up to 46,000 jobs, and since the California economy is highly reliant upon the high technology associated with national defense expenditures, these closures will only exacerbate that devastation; and

WHEREAS, The California economy, already suffering from the strain of previous base closures, would be further injured by these additional closures, which would represent the loss of an estimated additional $10,200,000,000 in annual income; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California memorializes the President of the United States and the United States Congress to reject the entire base-closure list to be submitted on or before July 1, 1995, by the Defense Base Closure and Realignment Commission; and be it further

Resolved, That the President, in consultation with the Congress, is urged to develop a more balanced policy with regard to the security needs of the United States; and be it further

Resolved, That a more balanced national security policy should take into consideration the strong military strategic concerns of the United States Defense Department and the Joint Chiefs of Staff; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives,

and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 47

Assembly Concurrent Resolution No. 17—Relative to state employee merit awards.

[Filed with Secretary of State July 6, 1995.]

WHEREAS, An award of $5,000 has already been made to Richard W. Drouillard, Department of Transportation, for a proposal resulting in annual savings of $68,045 for recommending that the data lines be disconnected on leased data lines when they are not going to be used or are being replaced by improved data lines, thereby saving an average of $200 per segment, per month; and

WHEREAS, An award of $5,000 has already been made to Phillip L. Sustaita, Public Utilities Commission, for a proposal resulting in annual savings of $91,233 for recommending the revision of the commission's practice of mailing large volume documents and miscellaneous printed materials by third-class postage instead of first-class pre-sort, thereby generating substantial quantified savings; and

WHEREAS, An award of $5,000 has already been made to Michael P. Traverso, Department of Veterans Affairs, for a proposal resulting in net savings of $354,500 for recommending a policy and procedure to purchase drugs using the state pharmaceutical contract or the Federal Supply Schedule (FSS), whichever is cheaper, thereby allowing the veterans home pharmacy service to procure supplies and pharmaceuticals at the best price; and

WHEREAS, An award of $5,000 has already been made to Sonja A. Leeson, Employment Development Department, for a proposal resulting in net savings of $103,249 for recommending a new mail-sort method for mailing new employer registration packets, and using bulk rates instead of piece rates, thereby providing substantial savings; and

WHEREAS, An award of $5,000 has already been made to Charles I. Bettinger, Department of Water Resources, for a proposal resulting in first-year savings of $46,749 for recommending a specially designed and fabricated hydraulic tool to move the 114-inch diameter, 160-ton spherical valves at Edward Hyatt Powerplant when refurbishing the upstream seats, which would be used on a continuous basis every 20 months in conjunction with the maintenance of the upstream seats of Hyatt turbine shutoff valves; and

WHEREAS, An award of $5,000 has already been made to Lavonne A. Anderson, Department of Consumer Affairs, for a proposal

resulting in first-year net savings of $102,280 for recommending processing reports of delinquent Employment Development Department tax liens against licensed contractors as administrative suspensions under the provisions of Section 7145.5 of the Business and Professions Code rather than through field investigation and administrative disciplinary action, thereby providing substantial savings; and

WHEREAS, These employees' proposals have resulted in actual savings to the state of $766,056; and

WHEREAS, As a result of these savings and increased revenue, it is unnecessary to appropriate additional funds for payment of awards to these employees; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby requests that the following additional awards, authorized by the Department of Personnel Administration, be made to the following named employees:

Richard W. Drouillard—$1,805
Phillip L. Sustaita—$4,123
Michael P. Traverso—$30,450
Sonja A. Leeson—$5,325
Charles I. Bettinger—$324
Lavonne A. Anderson—$5,228; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Controller and the Department of Personnel Administration.

RESOLUTION CHAPTER 48

Senate Joint Resolution No. 14—Relative to veterans' benefits.

[Filed with Secretary of State July 6, 1995.]

WHEREAS, The Philippine Islands became a United States possession in 1898 when they were ceded from Spain following the Spanish-American War and remained a possession of the United States until 1946; and

WHEREAS, In 1934, Congress passed Public Law 73-127, the Philippine Independence Act, that set a 10-year timetable for the eventual independence of the Philippines and in the interim established a Commonwealth of the Philippines with certain powers over its internal affairs; and

WHEREAS, The granting of full independence ultimately was delayed for two years until 1946 because of the Japanese occupation of the islands from 1942 to 1945; and

WHEREAS, During the interval between 1934 and the final independence in 1946, the United States retained certain sovereign powers over the Philippines, including the right, upon order of the President of the United States, to call into the service of the United States Armed Forces all military forces organized by the Commonwealth government; and

WHEREAS, President Roosevelt invoked this authority by executive order of July 26, 1941, bringing the Philippine Commonwealth Army into the service of the United States Armed Forces of the Far East under the command of Lt. General Douglas MacArthur; and

WHEREAS, There are four groups of Filipino nationals who are entitled to all or some of the benefits to which United States veterans are entitled. These are:

(1) Filipinos who served in the regular components of the United States Armed Forces.

(2) Regular Philippine Scouts, called "Old Scouts," who enlisted in Filipino-manned units of the United States Army prior to October 6, 1945.

(3) Special Philippine Scouts, called "New Scouts," who enlisted in the United States Armed Forces between October 6, 1945, and June 30, 1947, primarily to perform occupation duty in the Pacific following World War II.

(4) Members of the Philippine Commonwealth Army who on July 26, 1941, were called into the service of the United States Armed Forces. This group includes organized guerrilla resistance units that were recognized by the United States Army; and

WHEREAS, The first two groups, Filipinos who served in the regular components of the United States Army and Old Scouts, are considered United States veterans and are generally entitled to the full range of United States veterans' benefits; and

WHEREAS, The other two groups, New Scouts and members of the Commonwealth Army, are eligible for certain benefits, and some of these are paid at lower than full rates. United States veterans' medical benefits for the four groups of Filipino veterans vary depending upon whether the person resides in the United States or the Philippines; and

WHEREAS, The Old Scouts were created in 1901 pursuant to the Act of February 2, 1901, that authorized the President of the United States "to enlist natives [of the Philippines] ... for service in the Army, to be organized as scouts ... or as troops or companies, as authorized by this Act, for the regular Army"; and

WHEREAS, Prior to World War II, these troops assisted in the maintenance of domestic order in the Philippines and served as a combat ready force to defend the islands against foreign invasion; and

WHEREAS, During the war, they participated in the defense of and retaking of the islands from Japanese occupation. The eligibility of Old Scouts for benefits based on military service in the United

States Armed Forces, including veterans' benefits, has long been established; and

WHEREAS, The federal Department of Veterans Affairs operates a comprehensive program of veterans' benefits in the Republic of the Philippines, including the operation of a federal Department of Veterans Affairs office in Manila; and

WHEREAS, The federal Department of Veterans Affairs does not operate a program of this type in any other country; and

WHEREAS, The program in the Philippines evolved because the Philippines were a United States possession during the period 1898–1946, and many Filipinos have served in the United States Armed Forces, and because the preindependence Commonwealth Army of the Philippines was called into the service of the United States Armed Forces during World War II (1941–1945); and

WHEREAS, Many Filipino veterans, however, have been discriminated against by the classification of their service as not being service rendered in the United States Armed Forces for purposes of benefits from the federal Department of Veterans' Affairs; and

WHEREAS, Filipinos gallantly served at Bataan and Corregidor, giving their toil, blood, and lives so as to provide the United States valuable time to rearm materiel and men to launch the counter-offensive in the Pacific war; and

WHEREAS, All other nationals, even foreigners, who served in the United States Armed Forces have been recognized and granted full rights and benefits, but the Filipinos who actually were American nationals at that time were and are still denied recognition and singled out for exclusion, and this treatment is unfair and discriminatory; and

WHEREAS, On March 6, 1995, House Resolution 1136 was introduced in the United States House of Representatives, and on January 4, 1995, Senate Bill 55 was introduced in the United States Senate, to deem service in the organized military forces of the government of the Commonwealth of the Philippines and the Philippine Scouts during World War II to be active service for the purpose of benefits under programs administered by the Secretary of Veteran Affairs; and

WHEREAS, On January 4, 1995, Senate Bill 72 was introduced in the United States Senate, to direct the Secretary of the Army to issue a certificate of service to Filipino nationals whom the Secretary determines have performed any military service in the Philippine Islands during World War II that qualifies the person or a survivor to receive any military, veterans', or other benefits under federal laws; and

WHEREAS, The proposed legislation would bring relief to the estimated remaining 60,000 to 80,000 Filipino veterans (out of the initial 175,000 to 200,000 troops) who risked their lives during World War II, surviving the occupation of the Philippine Islands and the infamous Bataan Death March, and who, now in their mid-60's to

mid-90's, have been battling for years to obtain the benefits of other veterans of that war; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to act favorably on legislation pertaining to granting full veterans' benefits to Filipino veterans of the United States Armed Forces; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 49

Assembly Concurrent Resolution No. 11—Relative to disabled access.

[Filed with Secretary of State July 11, 1995.]

WHEREAS, Under the California State Accessibility Standards, in the California Building Standards Code, detailed specifications have existed for tactile signage since 1982; and

WHEREAS, These specifications were revised and went into effect April 1, 1994, to comply with the Americans with Disabilities Act (ADA) Accessibility Guidelines and some of these specifications are more stringent than those contained in the ADA guidelines; and

WHEREAS, A vast majority of braille tactile signage manufacturers apparently lack familiarity with the provisions of the California Building Standards Code that are more stringent than the requirements of the ADA; and

WHEREAS, Noncompliance with the California Building Standards Code results in sporadic and unpredictable use of braille tactile signage that renders the signage inconsistent and possibly unusable to blind and visually impaired consumers; and

WHEREAS, The state's example is the most effective means of implementing existing guidelines; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That, on or before January 1, 1996, the Division of the State Architect within the Department of General Services shall notify designers and manufacturers of braille tactile signage that produce products for use in California that the requirements for braille tactile signage in California are in some cases more stringent than the requirements of the ADA and that their products that are

sold in California must comply with the California Building Standards Code; and be it further

RESOLVED, That the Division of the State Architect may notify designers and manufacturers of braille tactile signage by using any appropriate methods, including but not limited to advertisements and articles in trade publications, displays at trade shows, and direct communications with firms that may not be aware of the California requirements; and be it further

Resolved, That, on or before January 1, 1996, the Division of the State Architect shall appropriately notify state departments and agencies that regulate or purchase braille tactile signage of the braille signage requirements of the California Building Standards Code; and be it further

Resolved, That the Chief Clerk of the Assembly transmit this resolution to the State Architect.

RESOLUTION CHAPTER 50

Assembly Joint Resolution No. 26—Relative to private activity bonds.

[Filed with Secretary of State July 11, 1995.]

WHEREAS, Housing and infrastructure development play a critical role in the economy at the state and national level; and

WHEREAS, The availability of affordable housing in California is critical to the economic stability of the State of California; and

WHEREAS, The California Constitution limits the ability of local government to provide funding options for the financing of public infrastructure; and

WHEREAS, The federal Internal Revenue Service is currently considering proposed regulations in connection with private activity bonds which, among other things, would create a new definition of "private business use" in Regulation Section 1.141-3(b), as proposed to be added to Title 26 of the Code of Federal Regulations, that would have the effect of ending the tax exempt status of many assessment and Mello-Roos financed projects; and

WHEREAS, Regulation Section 1.141-3(b)(8), as proposed to be added to Title 26 of the Code of Federal Regulations, would treat a developer as having a private business use of a financed facility if the financing by the developer discharges a legal obligation of the developer, even if the developer has no possession or control over the facility; and

WHEREAS, The custom in California is often to require a developer to pay for public infrastructure improvements for

municipalities that are unable to fund those improvements as a condition of approving or granting a permit for the project; and

WHEREAS, Regulation Section 1.141-3(e)(3)(i), as proposed to be added to Title 26 of the Code of Federal Regulations, would provide that private business use occurs where a bond-financed facility is functionally and integrally related to a private facility, which would potentially inhibit the construction of a school or other municipal facility in a mixed-use development; and

WHEREAS, Regulation Section 1.141-3(f)(2), as proposed to be added to Title 26 of the Code of Federal Regulations, would permit private use by a developer only if the developer's property is reasonably expected to be sold to the general public within three years after the issue of the bond; and

WHEREAS, A period of three years following the issuance of the bonds in which to complete the sale of all property in a development is not a reasonable period; and

WHEREAS, Regulation Sections 1.141-5(c)(3) and 1.141-5(c)(5), as proposed to be added to Title 26 of the Code of Federal Regulations, would, because of the limited scope of the tax assessment loan exception, treat Mello-Roos bonds as private loans and thus not eligible for tax-free bond provisions; and

WHEREAS, Regulation Section 1.141-15(b), as proposed to be added to Title 26 of the Code of Federal Regulations, would permit the Commissioner of Internal Revenue to use step transactions to treat separate bond issues as a single bond issue for purposes of determining whether the resulting single bond issue meets the private activity bond test; and

WHEREAS, California cities and redevelopment agencies sometimes coordinate in separate bond issues the issuance of tax increment bonds for land acquisition and Mello-Roos bonds for public infrastructure improvements, which should not be treated as step transactions of a single bond issue; and

WHEREAS, The definition of "private business use" and related regulations in connection with private activity bonds could effectively prohibit the use of tax-exempt bonds to finance local infrastructure development; and

WHEREAS, These prohibitions ultimately would put a halt to most new housing development and construction in California and nationally; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California hereby respectfully memorializes the President of the United States and the Commissioner of Internal Revenue to delete or revise Regulation Sections 1.141-3(b), 1.41-3(e)(3)(i), 1.141-3(f)(2), 1.141-5(c)(3), 1.141-5(c)(5), and 1.141-15(b), as proposed by the Internal Revenue Service to be added to Title 26 of the Code of Federal Regulations, or any other regulatory provision that would limit the use of tax-exempt bond financing to a greater extent than provided by

current federal statute or regulations, from proposed regulations that have been promulgated by the Internal Revenue Service; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President of the United States and to the Commissioner of Internal Revenue.

RESOLUTION CHAPTER 51

Assembly Concurrent Resolution No. 40—Relative to the California State Police.

[Filed with Secretary of State July 12, 1995.]

WHEREAS, On March 15, 1887, the Legislature enacted Section 425 of the Political Code, authorizing the appointment of two "special policemen ... for the State Capitol Grounds ..." at a salary of $100 a month, thereby creating the California State Police; and

WHEREAS, Since then, the force has grown to include more than 400 sworn and nonsworn personnel in more than 20 field offices throughout the state, who provide police services to tens of thousands of state employees and millions of users of state buildings and grounds; and

WHEREAS, Services provided by the California State Police include protective services for the Governor, constitutional officers, and legislators; investigations of crimes and accidents occurring on state property; maintenance of security and order at public events; disposal of explosives; air surveillance and ground patrol of the State Water Project; assistance to state agencies in designing access control systems and emergency and crime prevention plans; training programs for other law enforcement agencies; assistance to official organizations during emergencies and disasters; and escort and bailiff services; and

WHEREAS, Over the 108 years since the agency's inception, California State Police personnel have performed their duties with distinction and bravery, sometimes at the cost of their lives; and

WHEREAS, While the California State Police currently function within the Department of General Services, as of July 11, 1995, the force will be absorbed into the Department of the California Highway Patrol, thereby ceasing to exist as the oldest state law enforcement agency in California; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature recognizes that July 10, 1995, will be the last day of independent operation of the California State Police; and be it further

Resolved, That the Legislature expresses the appreciation of the people of the State of California to the California State Police for their years of dedicated service in their behalf; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, to the Director of General Services, and to the Commissioner of the California Highway Patrol.

RESOLUTION CHAPTER 52

Senate Concurrent Resolution No. 39—Relative to Columbia State Historic Park.

[Filed with Secretary of State July 14, 1995.]

WHEREAS, Gold was discovered near what later became the town of Columbia on March 27, 1850; and

WHEREAS, Columbia was known as the "Gem of the Southern Mines"; and

WHEREAS, Through the dedication of local citizens and state officials, Columbia was designated a State Historic Park by Governor Earl Warren on July 15, 1945; and

WHEREAS, Columbia was designated as the capital of California for the day on July 15, 1945; and

WHEREAS, Columbia State Historic Park contains the largest single collection of intact Gold Rush era structures in the State of California; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby recognizes the historic value of Columbia State Historic Park and commends the citizens of the town of Columbia for their efforts in preserving the historic character and the park's unique place in the history of the state.

RESOLUTION CHAPTER 53

Senate Concurrent Resolution No. 8—Relative to the creation of the Joint Committee on Coordination of Public Policy Research.

[Filed with Secretary of State July 18, 1995.]

WHEREAS, Subdivision (k) of Section 19320 of the Education Code authorizes the State Library to provide reference and research services to the Legislature; and

WHEREAS, The Legislature, in the Budget Act of 1991, created a bureau in the State Library to augment implementation of this law; and

WHEREAS, The purpose of the bureau is to provide timely, objective information and analysis on matters relating to California public policy to the Legislature and the Governor; and

WHEREAS, The ready availability of objective research and analysis on matters of public importance is critical to the functioning of the Legislature and the administration; and

WHEREAS, Convenient access to information sources available in state government agencies and throughout the state, nation, and internationally that bear on matters of state policy is increasingly important to the functioning of the Legislature and the administration; and

WHEREAS, The current and proposed state budgets continue state financial support for the bureau; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Joint Committee on Coordination of Public Policy Research is hereby established and authorized to do all of the following:

(1) Monitor the implementation of the law establishing the State Library and its units and divisions.

(2) Oversee the State Library and the units, bureaus, and divisions therein.

(3) Make recommendations for improving public access to state government information and publications.

(4) Make recommendations concerning the distinctive role of the State Library in promoting the use of technology, equipment, and programs as they pertain to public libraries, school libraries, and related institutions.

(5) Make recommendations for public policy research efforts and legislative action aimed at improving the ability of state government agencies and departments to take advantage of any potential for increased federal financial participation by utilizing existing state resources to the greatest extent possible.

(6) Make recommendations for improving the availability of information and of nonpartisan analytical research on public policy matters of importance in California to the Legislature, the Governor, and the agencies and departments of state government; and be it further

Resolved, That the Senate Committee on Rules may make money available from the Senate Operating Fund as it deems necessary for the expenses of the committee and its members. Any expenditure of funds shall be made in compliance with policies set forth by the Senate Committee on Rules and shall be subject to the approval of that committee; and be it further

Resolved, That the Joint Committee on Coordination of Public Policy Research is composed of six members from the Senate

appointed by the Senate Committee on Rules and six members from the Assembly appointed as prescribed by the Assembly. The chairperson of the committee shall be appointed by the Senate Committee on Rules, and the vice chairperson shall be appointed as prescribed by the Assembly; and be it further

Resolved, That the Joint Committee on Coordination of Public Policy Research has and may exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time; and be it further

Resolved, That the Joint Committee on Coordination of Public Policy Research shall, within 15 days of its initial authorization, and thereafter consistent with the normal annual appropriations process for funding legislative committees, present its budget to the Senate Committee on Rules for its review, comment, and approval; and be it further

Resolved, That the Joint Committee on Coordination of Public Policy Research, subject to the approval of the Senate Committee on Rules, may contract with other agencies, public or private, as necessary to obtain services or studies that will assist the committee in carrying out its responsibilities; and be it further

Resolved, That the Joint Committee on Coordination of Public Policy Research shall report to the Legislature at the end of each legislative session on its findings and recommendations; and be it further

Resolved, That the Joint Committee on Coordination of Public Policy Research is authorized to act until January 31, 1997, at which time the committee's existence shall terminate.

RESOLUTION CHAPTER 54

Assembly Concurrent Resolution No. 6—Relative to the San Luis Rey Mission Expressway.

[Filed with Secretary of State July 19, 1995.]

WHEREAS, Founded by Franciscan Padres in 1798, Mission San Luis Rey was the 18th of 21 missions established in California; and

WHEREAS, The picturesque and fertile valley of San Luis Rey, situated between the existing missions at San Diego and San Juan Capistrano, was chosen as the site for what would become the "King of Missions," the largest and most populous in the California mission chain; and

WHEREAS, Constructed entirely by hand from adobe and wood, with walls over six feet thick, the ancient mission buildings covered an area of approximately six and one-half acres; and

WHEREAS, Wherever the Spanish flag was planted in the New World, Christianity accompanied it, and the role of the missions in California was to bring the Spaniards' faith to the natives who inhabited the land; and

WHEREAS, In addition to religious tutelage, the Franciscan Padres at Mission San Luis Rey successfully taught many of the Indians to read and write, brought them musical skills, and trained them in trades and crafts, such as carpentry, masonry, shoemaking, weaving, metal work, pottery making, sewing, knitting, and dressmaking; and

WHEREAS, During the "golden age" of the California missions, Mission San Luis Rey housed and served an Indian community of approximately 3,000, who raised 60,000 head of domesticated animals of all sorts and produced an annual crop of 13,000 bushels of grain; and

WHEREAS, After 1826, when Mission San Luis Rey was secularized and its Indians "emancipated," the mission's property and buildings fell into disuse and disrepair until President Abraham Lincoln, in 1865, ordered the mission returned to church ownership; and

WHEREAS, Today, the restored mission stands proud as a National Historic Landmark and is operated by the Franciscan order as a retreat and community center; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the portion of State Highway Route 76, a four-lane expressway between Interstate Route 5 and State Highway Route 15, is hereby officially designated the San Luis Rey Mission Expressway; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 55

Assembly Concurrent Resolution No. 22—Relative to State Highway Route 101.

[Filed with Secretary of State July 19, 1995.]

WHEREAS, At the State Highway Route 101 crossing of the Van Duzen River near Alton, in Humboldt County, a new highway bridge will accommodate northbound traffic, while an existing parallel bridge will carry southbound traffic; and

WHEREAS, The existence of these bridges affords a unique opportunity for honoring two of Humboldt County's outstanding citizens; and

WHEREAS, The Van Duzen River is named for one of the county's first settlers, James Van Duzen, formerly of Schyler, New York, who arrived in the area with the Gregg-Wood party in 1849; and

WHEREAS, The party of explorers led by Josiah Gregg and Lewis Wood, traveled overland to California and discovered Humboldt Bay in 1849; and

WHEREAS, In 1850, James Van Duzen established a farm on land at the mouth of the Van Duzen River; and

WHEREAS, Van Duzen perished in 1859 when a canoe, in which he was ferrying supplies to the farm, capsized; and

WHEREAS, It is fitting, therefor, that the southbound State Highway Route 101 bridge near Alton, in Humboldt County, be named for James Van Duzen; and

WHEREAS, As Humboldt County grew, so did its needs, and one person who contributed so much to meeting those needs was Harold W. Comfort, M.D., who practiced medicine in southern Humboldt County for a third of a century; and

WHEREAS, Born May 2, 1894, Dr. Comfort was a typical small town doctor, spending long days and nights caring for his patients; and

WHEREAS, He was always there for his patients, a kind, warm-hearted, understanding man, who was loved by all who knew him; and

WHEREAS, In caring for two to three times the number of patients normally served by a physician, Dr. Comfort carried a burden that undoubtably contributed to his untimely death in 1954; and

WHEREAS, It is appropriate that the new northbound State Highway Route 101 bridge near Alton, in Humboldt County, be dedicated to the memory of Dr. Harold W. Comfort who spent his life caring for and serving the people of southern Humboldt County; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the southbound State Highway Route 101 bridge near Alton, in Humboldt County, is hereby officially designated the James Van Duzen Memorial Bridge, and that the new northbound bridge is officially designated the Harold W. Comfort Memorial Bridge; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing those special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 56

Assembly Joint Resolution No. 33—Relative to renaming Fredonyer Mountain and Fredonyer Pass.

[Filed with Secretary of State July 19, 1995.]

WHEREAS, Fredonyer Mountain and Fredonyer Pass are located 15 miles west of Susanville in the Lassen National Forest, and are named after an early resident of the area, Atlas Fredonyer, who is credited with discovery of the pass in 1850; and

WHEREAS, In May 1862, Atlas Fredonyer was tried and convicted in Quincy for incestuous and criminal assault upon his 15-year old daughter Sally for which crime he was incarcerated in the State Prison at San Quentin; and

WHEREAS, Naming the mountain and pass after Atlas Fredonyer, given his crimes and subsequent conviction, seems improper, unacceptable, and undeserving to the residents of Lassen County and the state; and

WHEREAS, On March 2, 1995, Lassen County Deputy Sheriff Larry Griffith became the first peace officer in the county to be killed in the line of duty in the last 25 years; and

WHEREAS, Deputy Griffith was responding to a domestic dispute that day when he was mortally wounded while providing cover for fellow officers at the scene, which action saved the lives of two officers; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the United States Board on Geographic Names, United States Geological Survey, to rename Fredonyer Mountain and Fredonyer Pass to Griffith Mountain and Griffith Pass in honor and recognition of the sacrifice made by Deputy Sheriff Larry Griffith on behalf of the residents of Lassen County; and be it further

Resolved, That upon renaming the mountain and pass, a memorial plaque be erected, in a suitable location on the pass, to memorialize Deputy Sheriff Griffith and the courageous event that led to renaming the sites after him, and be it further

Resolved, That the design, construction, and erection of the plaque be a cooperative effort of the federal government and the residents of the community; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of Interior, to the Director of the United

States Geological Survey, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 57

Senate Joint Resolution No. 5—Relative to the federal Clean Air Act.

[Filed with Secretary of State July 24, 1995.]

WHEREAS, The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) was enacted to encourage states to act appropriately to clean up the air in their own neighborhoods; and

WHEREAS, The act, as recently amended (P.L. 101-549), has continued to deviate from the principle of establishing standards and allowing states to design specific actions to satisfy those standards and to rely more on the principle that Washington "knows best"; and

WHEREAS, The federal law now specifies detailed procedures and programs that the states must follow, including the requirement for specific types of smog check and other similar programs; and

WHEREAS, The State of California has been in the forefront of clean air activities, including the adoption of new vehicle emission standards, and possesses extensive experience and knowledge about programs and activities that are feasible and cost-effective and those that are not; and

WHEREAS, The Clean Air Act has placed California at the mercy of federal bureaucrats to the extent that the state must negotiate with them on minute details, such as whether or not the smog inspection stations can be allowed to sell candy bars and other similar commodities; and

WHEREAS, Congress has expressed a strong interest in reducing the role of the federal government by allowing states to manage their own affairs; and

WHEREAS, There is a question regarding the efficacy of the science that the Environmental Protection Agency has used to diminish the relative effectiveness of alternative clean air strategies; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to amend the Clean Air Act to retain the clean air standards, including requirements to reduce emissions from mobile sources, but remove specific requirements such as vehicle inspection and maintenance, and to require the Environmental Protection Agency to reevaluate, using recent scientific, technological, and other environmental

findings, the methodology and science used to measure both the inventory of emissions and the effectiveness of individual components of the state clean air plans for purposes of compliance with the broader goals of the Clean Air Act Amendments of 1990 (P.L. 101-549); and be it further

Resolved, That the California Legislature will continue to pursue all feasible and cost-effective strategies that, as implemented, produce cleaner air for California's residents, and that those strategies will be pursued because doing so is good for the health and safety of the people of California and not because doing so is mandated by the United States Congress, the federal bureaucracy, or a federal judge; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, and each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 58

Senate Joint Resolution No. 18—Relative to homebased business.

[Filed with Secretary of State July 24, 1995.]

WHEREAS, The Home Office and Business Opportunities (HOBO) Association of California, an innovative grassroots organization recognized as one of the foremost leaders and advocates of homebased business issues statewide, is sponsoring a Homebased Business Week in the state; and

WHEREAS, Homebased Business Week will build public awareness and advance the values of homebased business to California; and

WHEREAS, Homebased Business Week will create and promote change, foster economic growth, increase employment, and support the desire for independence and self-reliance, while realizing the concerns for child care, the quality of home life, and the environment; and

WHEREAS, Homebased Business Week will assist homebased businesses by providing educational and informational programs, forums, workshops, seminars, and conferences, which will aid in the establishment and development of homebased businesses all across California; and

WHEREAS, Homebased Business Week will assist the growing numbers of homebased business owners in realizing their potential in finding the American dream; and

WHEREAS, It would be of benefit to other states to observe Homebased Business Week nationally; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California, sharing these interests and concerns, hereby declares the week of September 25 through 29, 1995, as Homebased Business Week in California; and be it further

Resolved, That the Legislature further urges the President and Congress of the United States to declare the week of September 25 through 29, 1995, as Homebased Business Week nationally; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and representative from California in the Congress of the United States, to the Governor, and to the Home Office and Business Opportunities Association.

RESOLUTION CHAPTER 59

Assembly Concurrent Resolution No. 2—Relative to Red Ribbon Week.

[Filed with Secretary of State July 24, 1995.]

WHEREAS, Californians for Drug-Free Youth, Inc., a statewide parent-community organization, the State Department of Alcohol and Drug Programs, the State Department of Education, the Attorney General's Crime Prevention Center, the California Parent Teacher Association, and 89 other statewide agencies, departments, and organizations are cosponsoring October 23 through October 31, 1995, as "Red Ribbon Week"; and

WHEREAS, Parents, youth, schools, business, law enforcement, religious institutions, service organizations, senior citizens, medical and military personnel, sports teams, and individuals throughout the State of California will demonstrate their commitment to drug-free, healthy lifestyles by wearing and displaying red ribbons during this week-long celebration; and

WHEREAS, The Assembly has further committed its resources to ensure the success of the Red Ribbon celebration; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the California Legislature does hereby support the Red Ribbon celebration by proclaiming October 23 through October 31, 1995, as "Red Ribbon Week," and by encouraging the citizens of California to help build drug-free communities and to participate in drug prevention activities by

making a visible statement that we are firmly committed to a drug-free lifestyle; and be it further

Resolved, That the California Legislature encourages all citizens to personally support, "HEALTHY MEANS DRUG-FREE!"; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 60

Assembly Concurrent Resolution No. 24—Relative to California-Japan business relations.

[Filed with Secretary of State July 24, 1995.]

WHEREAS, Japan is California's leading commercial partner, both as the state's top export destination and foreign investor; and

WHEREAS, In 1993, California exports to Japan totaled $10.5 billion, more than California exports to Germany, Great Britain, and France combined; and

WHEREAS, The two leading organizations in California, representing a substantial percentage of the Japanese business community, are the Japanese Chamber of Commerce of Northern California, comprising over 400 Japanese-affiliated companies, and the Japan Business Association of Southern California, with over 600 Japanese-affiliated firms; and

WHEREAS, The Japanese Chamber of Commerce of Northern California and the Japan Business Association of Southern California have recently published their study, entitled "Charting California's Economic Recovery," which discusses concrete and innovative ways for the Japanese business community and the state to work together to promote collaborative development in the Pacific region, to help market California to Japanese business leaders, and to improve support for California companies in Japan; and

WHEREAS, The study conducted by the Japanese business community contained many constructive recommendations to help enhance economic development and promote mutual trade and commerce, including the exchange of honorary goodwill ambassadors, public and private collaboration in marketing efforts, and commercial and cultural exchanges; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California, on behalf of the people of California, wishes to demonstrate that the state acknowledges and appreciates the suggestions and cooperative efforts of the Japanese business community to help improve the California economy, and further, that California welcomes further

foreign investment and international trade with all nations, including Japan; and be it further

Resolved, That the Legislature hereby requests the Governor to accept the invitation of the Japanese business community to appoint a person who has lived and worked in California and Japan to be an Honorary Goodwill Ambassador to help promote business and economic ties between California and Japan; and be it further

Resolved, That the Legislature hereby requests the Governor, on behalf of the people of California, to extend an invitation to the government of Japan to reciprocate in this exchange by designating an Honorary Goodwill Ambassador to California; and be it further

Resolved, That the duties of the a Honorary Goodwill Ambassador shall be to promote California by traveling to Japan to promote trade and foreign investment in California, meet with executive officers of private corporations in Japan in order to secure commitments to invest or increase operations in California or both, promote joint ventures between Japanese and California corporations, invite Japanese executives to visit California, make courtesy visits to prefecture officials to promote goodwill on behalf of California, and advise the state on the status of California-Japan relations; and be it further

Resolved, That expenses incurred by the Honorary Goodwill Ambassador, such as travel, entertainment, and appropriate token gifts, shall be funded by interested private entities and nonprofit associations; and be it further

Resolved, That the Legislature states its intention to continue to work cooperatively with the Japanese business community to take other necessary actions designed to help promote more investment and trade with Japan; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, to the Consul General of Japan, to the Japanese Chamber of Commerce of Northern California, and the Japan Business Association of Southern California.

RESOLUTION CHAPTER 61

Assembly Concurrent Resolution No. 38—Relative to Juneteenth, Black Independence Day.

[Filed with Secretary of State July 25, 1995.]

WHEREAS, June 19, 1995, marks the 130th Anniversary of Juneteenth, Black Independence Day; and

WHEREAS, The history of Juneteenth dates back to June 19, 1865, when General Gordon Granger landed at Galveston, Texas, with a regiment of Union Army soldiers and read General Order No. 3,

which began with the following two memorable sentences: "The people of Texas are informed that in accordance with a Proclamation from the Executive of the United States, all slaves are free. This involves an absolute equality of rights and rights of property between former masters and slaves, and the connection heretofore existing between them becomes that between employer and free laborer."; and

WHEREAS, That historical pronouncement inspired the newly freed ex-slaves to coin a nickname for their cause for celebration—a blend of the words "June" and "nineteenth"—and to create several legends explaining the $2^1/_2$ year delay in the arrival of the news of emancipation in Texas, ranging from poor communication technology to the slaveowners' efforts to finish one last harvest; and

WHEREAS, Juneteenth, a commemoration of African American history, began its expansion beyond Texas, Louisiana, and Arkansas soon after its initial observance, and currently is celebrated by African Americans in all regions of the United States; and

WHEREAS, African Americans have played a major role in the history of the United States and have enriched society through their steadfast commitment to promoting brotherhood, equality, and justice; and

WHEREAS, From the earliest days of the United States, the course of its history has been influenced greatly by African Americans in many diverse areas, from science, medicine, business, and education to government, industry, and social leadership; and

WHEREAS, History books of United States history note prominently many of the gallant and accomplished African Americans who have played a major role in American history, including Booker T. Washington, Sojourner Truth, George Washington Carver, Mary McCleod Bethune, Matthew Hansen, Harriet Tubman, Daniel Hale Williams, Fannie Lou Hamer, Charles Drew, and Dr. Martin Luther King, Jr.; and

WHEREAS, A growing number of American and African American cultural institutions, including the Smithsonian Institution's National Museum of American History in Washington, D.C., the Chicago Historical Society, the Black Archives of Mid-America Inc. in Kansas City, Missouri, the Los Angeles Cultural Center, the Henry Ford Museum & Greenfield Village in Detroit, and the Museum of African-American Life and Culture in Dallas, have sponsored Juneteenth-based cultural events designed to share knowledge of this celebration with all Americans; and

WHEREAS, Juneteenth celebrations are a tribute to those African Americans who fought so long and worked so hard to make the dream of equality a reality; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That June 19 is hereby declared permanently as Juneteenth throughout the State of California; and be it further

Resolved, That the Legislature urges all Californians to take this opportunity to reflect on the significant role that African Americans have played in the history of the United States and on the positive impact that they continue to make on society; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 62

Senate Concurrent Resolution No. 23—Relative to a sister-state relationship.

[Filed with Secretary of State July 26, 1995.]

WHEREAS, The sister city-state concept was inaugurated by the President of the United States in 1956 and this program has resulted in greater friendship and understanding between the people of the United States and other nations through direct contact; and

WHEREAS, We live in an interconnected world with a global economy, so that international friendship and cultural understanding are increasingly important; and

WHEREAS, California and the Special Province of Yogyakarta, Indonesia, have much in common, including geographic features and a strong educational and international focus; and

WHEREAS, Yogyakarta is the center of Javanese culture and of particular interest is the way multiculturalism has mixed with the expressions of original culture in that province; and

WHEREAS, There are 68 higher educational institutions, of which 12 are universities, making Yogyakarta known as Indonesia's center of knowledge and education; and

WHEREAS, The people of the region are educated at an unusually high level, have been exposed to a broad choice of fields, and are capable of adjusting to new skills and performing highly skilled work; and

WHEREAS, Yogyakarta has a well-organized international community with clubs that organize arts, sports, and other family activities; and

WHEREAS, Yogyakarta has adequate air and land transportation systems and a modern communications system, including international lines, facsimile, and telex; and

WHEREAS, Since over 50 percent of its people have jobs in small businesses and Yogyakarta is Indonesia's second most visited tourist region, the province has potential for growth in business activities and as a tourist area; and

WHEREAS, A sister-state relationship with California would promote international trade, commerce, and tourism, increase the

potential for commercial relationships, and assist the Special Province of Yogyakarta in receiving technical assistance because California has much special expertise to offer in environmental protection, energy development and conservation, and agricultural technology, needed by a rapidly growing economy; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature, on behalf of the people of the State of California, extend to the people of the Special Province of Yogyakarta, Indonesia, through the Sultan and the Governor of the Special Province of Yogyakarta, an invitation to join the State of California as a sister state; and be it further

Resolved, That the Legislature encourages the Trade and Commerce Agency, the Environmental Protection Agency, the Department of Food and Agriculture, and the State Energy Resources Conservation and Development Commission to assist in implementing programs and activities to meet the technical assistance needs of the people of the Special Province of Yogyakarta and to promote mutual trade and commerce; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor, the Secretary of Trade and Commerce, the Secretary for Environmental Protection, the Secretary of Food and Agriculture, the chairperson of the State Energy Resources Conservation and Development Commission, and to the Sultan and the Governor of the Special Province of Yogyakarta, Indonesia.

RESOLUTION CHAPTER 63

Senate Concurrent Resolution No. 30—Relative to Joint Rule 37.

[Filed with Secretary of State July 26, 1995.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That Joint Rule 37 is adopted as a Joint Rule of the Senate and Assembly for the 1995–96 Regular Session, to read:

Joint Legislative Budget Committee

37. In addition to any other committee provided for by these rules, there shall be a joint committee to be known and called the Joint Legislative Budget Committee, which is hereby declared to be a continuing body.

It shall be the duty of the committee to ascertain facts and make recommendations to the Legislature and to the houses thereof concerning the state Budget, the revenues and expenditures of the

state, and the organization and functions of the state, its departments, subdivisions and agencies, with a view of reducing the cost of the state government and securing greater efficiency and economy.

The committee shall consist of eight Members of the Senate and eight Members of the Assembly. The Senate members of the committee shall consist of eight Members of the Senate appointed by the Senate Committee on Rules. The Assembly members of the committee shall consist of eight Members of the Assembly appointed by the Speaker of the Assembly. The committee shall select its own chairman or chairwoman.

Any vacancies occurring between regular sessions in the Senate membership of the Joint Legislative Budget Committee shall be filled by the Senate Committee on Rules, and the Senators appointed shall hold over until their successors are regularly selected. For the purposes of this rule, a vacancy shall be deemed to exist as to a Senator whose term is expiring whenever he or she is not reelected at the general election.

Any vacancies occurring between regular sessions in the Assembly membership of the Joint Legislative Budget Committee shall be filled by the Speaker of the Assembly, and the Members of the Assembly appointed shall hold over until their successors are regularly selected. For the purposes of this rule, a vacancy shall be deemed to exist as to a Member of the Assembly whose term is expiring whenever he or she is not reelected at the general election.

Any vacancy occurring at any time in the Assembly membership of the committee shall be filled by appointment by the Speaker. The committee shall have the authority to make rules to govern its own proceedings and its employees. It may also create subcommittees from its membership, assigning to its subcommittees any study, inquiry, investigation, or hearing which the committee itself has authority to undertake or hold and the subcommittee for the purpose of this assignment shall have and may exercise all the powers conferred upon the committee, limited only by the express terms of any rule or resolution of the committee defining the powers and duties of the subcommittee. Such powers may be withdrawn or terminated at any time by the committee.

The Joint Legislative Budget Committee may render services to any investigating committee of the Legislature pursuant to contract between the Joint Legislative Budget Committee and the committee for which the services are to be performed. The contract may provide for payment to the Joint Legislative Budget Committee of the cost of such services from the funds appropriated to the contracting investigating committee. All legislative investigating committees are authorized to enter into such contracts with the Joint Legislative Budget Committee. Money received by the Joint Legislative Budget Committee pursuant to any such agreement shall be in augmentation of the current appropriation for the support of the Joint Legislative Budget Committee.

The provisions of Rule 36 shall apply to the Joint Legislative Budget Committee, and it shall have all the authority provided in such rule or pursuant to Section 11 of Article IV of the Constitution.

The committee shall have authority to appoint a Legislative Analyst, to fix his or her compensation and to prescribe his or her duties, and to appoint such other clerical and technical employees as may appear necessary. The duties of the Legislative Analyst shall be as follows:

(1) To ascertain the facts and make recommendations to the Joint Legislative Budget Committee and under its direction to the committees of the Legislature concerning:

(a) The state Budget.

(b) The revenues and expenditures of the state.

(c) The organization and functions of the state, its departments, subdivisions, and agencies.

(2) To assist the Senate Budget and Fiscal Review Committee and the Assembly Committees on Appropriations and Budget in consideration of the Budget and all bills carrying express or implied appropriations and all legislation affecting state departments and their efficiency; to appear before any other legislative committee; and to assist any other legislative committee upon instruction by the Joint Legislative Budget Committee.

(3) To provide all legislative committees and Members of the Legislature with information obtained under the direction of the Joint Legislative Budget Committee.

(4) To maintain a record of all work performed by the Legislative Analyst under the direction of the Joint Legislative Budget Committee and to keep and make available all documents, data, and reports submitted to him or her by any Senate, Assembly, or joint committee. The committee may meet either during sessions of the Legislature, any recess thereof, or after final adjournment, and may meet or conduct business at any place within the State of California.

The chairman or chairwoman of the committee or, in the event of such person's inability to act, the vice chairman or vice chairwoman, shall audit and approve the expenses of members of the committee or salaries of the employees, and all other expenses incurred in connection with the performance of its duties by the committee, and the chairman or chairwoman shall certify the amount approved to the Controller, and the Controller shall draw his or her warrants upon the certification of the chairman or chairwoman, and the Treasurer shall pay the same to the chairman or chairwoman of the committee to be disbursed by the chairman or chairwoman.

On and after the commencement of a succeeding regular session those members of the committee who continue to be Members of the Senate and Assembly, respectively, continue as members of the committee until their successors are appointed, and the committee continues with all its powers, duties, authority, records, papers,

personnel, and staff, and all funds theretofore made available for its use.

Upon the conclusion of its work, any Assembly, Senate, or joint committee (other than a standing committee) shall deliver to the Legislative Analyst for use and custody all documents, data, reports, and other materials that have come into the possession of such committee and which are not included within the final report of such committee to the Assembly, Senate, or the Legislature, as the case may be. Such documents, data, reports, and other materials shall be available to Members of the Legislature, the Senate Office of Research, and the Assembly Offices of Research, upon request.

The Legislative Analyst with the consent of the committee shall make available to any Member or committee of the Legislature any other reports, records, documents, or other data under his or her control, except that reports prepared by the Legislative Analyst in response to a request from a Member or committee of the Legislature shall only be made available with the written permission of the Member or committee who made the request.

The Legislative Analyst, upon the receipt of a request from any committee or Member of the Legislature to conduct a study or provide information which falls within the scope of his or her responsibilities and which concerns the administration of the government of the State of California, shall at once advise the Joint Legislative Budget Committee of the nature of the request without disclosing the name of the Member or committee making the request.

The Legislative Analyst shall immediately undertake to provide the requesting committee or legislator with the service or information requested, and shall inform the committee or legislator of the approximate date when this information will be available. Should there be any material delay, he or she shall subsequently communicate this fact to the requester.

Neither the Committee on Rules of either house nor the Joint Rules Committee shall assign any matter for study to the Joint Legislative Budget Committee or the Legislative Analyst without first obtaining from the Joint Legislative Budget Committee an estimate of the amount required to be expended by it to make the study.

Any concurrent, joint, Senate, or House resolution assigning a study to the Joint Legislative Budget Committee or to the Legislative Analyst shall be referred to the respective rules committees. Before the committees shall act upon or assign such resolution, they shall obtain an estimate from the Joint Legislative Budget Committee of the amount required to be expended to make the study.

RESOLUTION CHAPTER 64

Assembly Concurrent Resolution No. 41—Relative to Breastfeeding Awareness Week.

[Filed with Secretary of State July 26, 1995.]

WHEREAS, All available knowledge indicates that human milk optimally enhances the growth, development, and well-being of the infant by providing the best possible nutrition, protection against numerous infections and allergies, and the promotion of maternal and infant bonding; and

WHEREAS, A mother derives emotional and physiological benefits by breastfeeding and at the same time she provides her child with the first-class nutrition guaranteed by the mother's milk; and

WHEREAS, Breastfeeding has benefits to society through stronger family bonds and decreased health care costs for infants; and

WHEREAS, The incidence and duration of breastfeeding among women in California is significantly lower than the national average, and is especially low among economically disadvantaged families; and

WHEREAS, The health care sector should support education of communities about the advantages of breastfeeding and the establishment of needed support systems to facilitate the initiation and continuation of breastfeeding as the normal and preferred infant feeding method; and

WHEREAS, The practice of breastfeeding has diminished due to social and economic pressures, misunderstanding of lactation management, and a decrease in available experienced breastfeeding mothers for help and support; and

WHEREAS, It should be a goal of the state to improve infant and family health by creating a supportive public environment that positively impacts the initiation and duration of breastfeeding; and

WHEREAS, World Breastfeeding Week is celebrated nationally and internationally during the first week of August; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the week of August 1 through 7, 1995, as Breastfeeding Awareness Week, a special time to promote, publicize, and celebrate breastfeeding, to afford an opportunity for the citizens of California to become aware of the many benefits of breastfeeding, and to support breastfeeding as a high priority for healthier babies in the state; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 65

Assembly Joint Resolution No. 42—Relative to human rights.

[Filed with Secretary of State July 27, 1995.]

WHEREAS, Harry Wu, a United States citizen and resident of Milpitas, California, is an outspoken critic of the Chinese penal system; and

WHEREAS, As a young man, Harry Wu was arrested by the Chinese Communist authorities after criticizing the Soviet Union's 1956 invasion of Hungary, and being labeled a "counterrevolutionary rightist," and spent 19 years as a political prisoner in a labor reform camp; and

WHEREAS, Harry Wu came to the United States in 1985 as a visiting scholar at the University of California, Berkeley, in the Civil Engineering Department; and

WHEREAS, Harry Wu is currently a research fellow at the Hoover Institution on War and Peace at Stanford University; and

WHEREAS, Harry Wu has completed research and published articles and books reflecting the human rights abuses in China, including "Laogai—The Chinese Gulag" and "Bitter Winds: A Memoir of My Years in China's Gulag"; and

WHEREAS, Harry Wu is the founder and executive director of the Laogai Foundation, founded to study China's labor camps; and

WHEREAS, Harry Wu has worked diligently and risked his freedom to document the human rights abuses and conditions in Chinese gulags, twice returning to China in 1991 to secretly videotape conditions in the Chinese gulag, and has provided documentation on how Chinese officials disguise prison-made products so that American and other Western businesses would not be reluctant to buy them; and

WHEREAS, Harry Wu has testified numerous times on Capitol Hill regarding human rights abuses, and most recently testified before the Senate Foreign Relations Committee on the illegal human organ trade that occurs within China's prison camps; and

WHEREAS, Harry Wu has gained international attention for his crusade against the Chinese system of prison labor camps and has been instrumental in providing documentary information that has been broadcast in the United States and Great Britain; and

WHEREAS, Harry Wu has been nominated for the Nobel Peace Prize for his work on behalf of human rights in China; and

WHEREAS, Harry Wu has been detained in China since June 19, 1995; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature hereby memorializes the President and Congress of the United States to continue to use all diplomatic

avenues available to press the Chinese government for the safe and speedy return of Harry Wu; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 66

Senate Concurrent Resolution No. 7—Relative to violence and crime at family planning clinics.

[Filed with Secretary of State August 2, 1995.]

WHEREAS, There has been an increase in murder, other acts of violence, harassment, and incitement to commit a crime at family planning clinics; and

WHEREAS, In California alone there have been 24 reported incidents of violence against clinics since 1991 resulting in damages of over $2.5 million; and

WHEREAS, Citizens have a legal right of access to family planning clinics and their services, including abortion; and

WHEREAS, Violence and threats of violence have a chilling effect on the right of access to family planning clinics; and

WHEREAS, The violence and crime directed at family planning clinics affects the lives and well-being of health care providers and their families; and

WHEREAS, While most antiabortion leaders have denounced violence against clinics and distanced themselves from such activity, some antiabortion extremists have embraced such violence and openly encouraged it; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California denounces the recent murders and the violence and incitement to violence at family planning clinics, urges all Californians to denounce the violence and in particular calls upon those who have supported or engaged in such violence against health care providers and family planning clinics to immediately cease such activities and refrain from any such activities in the future, and urges the Governor, the Attorney General, and all law enforcement officials to continue to take all steps necessary and feasible to protect citizens of this state from this violence and threat of violence; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor and the Attorney General.

RESOLUTION CHAPTER 67

Senate Concurrent Resolution No. 16—Relative to access to service stations by disabled persons.

[Filed with Secretary of State August 2, 1995.]

WHEREAS, Mobility is important in order to conduct a variety of daily activities independently; and

WHEREAS, For many persons with disabilities, the ability to operate a motor vehicle is a vital component in ensuring full integration into society, independent living, and achievement of educational and career goals; and

WHEREAS, Recognizing that fact, the Department of Rehabilitation has for many years assisted persons with disabilities to purchase accessible motor vehicles; and

WHEREAS, Without access to refueling service, however, the possession of an accessible motor vehicle is meaningless; and

WHEREAS, In 1982, the Legislature enacted AB 2461 (Chapter 530 of the Statutes of 1982), which added Section 13412 to the Business and Professions Code to ensure that persons with disabilities have access to refueling service; and

WHEREAS, Section 13412 of the Business and Professions Code requires service stations having both self-service and full-service fuel pumps to provide refueling to persons with disabilities at self-service prices; and

WHEREAS, Service stations or convenience stores that have remote controlled self-service fuel pumps operated by a single cashier and which never provide pump island service are exempt from that requirement; and

WHEREAS, Since the enactment of Section 13412 of the Business and Professions Code, the number of service stations having full-service fuel pumps has decreased significantly, making it increasing difficult for persons with disabilities to obtain refueling; and

WHEREAS, The increasing scarcity of full-service stations, and the reduction of hours for full-service islands, combined with a lack of information about the locations of full-service station locations, makes it increasingly likely that persons with disabilities will run out of fuel on the roadway thereby making them vulnerable to criminal attack; and

WHEREAS, The Department of Rehabilitation is responsible for investigating violations of Section 13412 of the Business and Professions Code; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Department of Rehabilitation is requested to convene, within 60 days of the enactment of this measure, a working group to recommend to the Governor and the Legislature changes or enhancements to existing law concerning access by persons with disabilities to refueling services; and be it further

Resolved, That the working group consist of the following persons:

(1) Three persons representing statewide cross-disability organizations.

(2) One representative of oil companies owning both refineries and service stations in California.

(3) One representative of independent service station owners.

(4) One representative of convenience stores operating fuel pumps.

(5) One representative of an organization representing local government jurisdictions.

(6) One representative of an organization representing seniors.

(7) One representative of an organization representing California drivers.

(8) One representative of independent oil marketers (jobbers) owning service stations.

(9) One person with a disability representing the Department of Rehabilitation; and be it further

Resolved, That the working group consider a variety of alternatives to the requirements of existing law that will assist disabled customers in obtaining fueling services; and be it further

Resolved, That the working group complete its report, including final recommendations, within nine months after the convening of the working group.

RESOLUTION CHAPTER 68

Senate Joint Resolution No. 2—Relative to air pollution.

[Filed with Secretary of State August 2, 1995.]

WHEREAS, Through the Clean Air Act and its amendments (42 U.S.C. Sec. 7401 et seq.), the federal government has undertaken the laudable task of ridding the air we breathe of pollution; and

WHEREAS, A balance must be struck between any steps taken to reduce air pollution and the adverse impact those steps may have

upon the economy, the business climate, and the cost and size of government; and

WHEREAS, Under the Clean Air Act Amendments of 1990 (P.L. 101-549), those states with areas that are classified as severe or extreme nonattainment areas are forced to adopt employee commute option and trip reduction laws; and

WHEREAS, Pursuant to the Clean Air Act, programs are being conducted by California air districts to clean the state's air through the imposition of onerous, burdensome, and costly regulations that require employers of companies having 100 or more employees to establish trip reduction plans; and

WHEREAS, An example of the ineffectiveness and excessive cost of employer trip reduction plan regulations can be shown by the resultant failures of the South Coast Air Quality Management District's employer trip reduction plan requirement, Rule 1501, previously known as Regulation 15; and

WHEREAS, Since its implementation in 1988, Rule 1501 has contributed negligible benefits towards reducing or eliminating smog within the Los Angeles basin, while at the same time, this rule's compliance cost upon employers is estimated at anywhere between $136 million and $197 million annually, or, roughly, $3,000 for every car not driven to work, for a total of approximately $1 billion that Los Angeles basin employers have been forced to spend to comply with this rule; and

WHEREAS, The South Coast Air Quality Management District Governing Board realizes that Rule 1501 is ineffective, expensive, and has fallen far short of the average vehicle ridership goals sought by the district pursuant to the Clean Air Act; and

WHEREAS, It is obvious that the costs and effects of mandated employer trip reduction plans, such as Rule 1501, can be devastating to companies trying to remain economically competitive, and these policies do not justify the economic and social hardships that will occur in nonattainment areas if employer trip reduction mandates continue as part of the Clean Air Act; and

WHEREAS, Despite the fact that other avenues may be available to pursue the goals of the Clean Air Act without having to resort to mandated employer trip reduction plans, these alternatives cannot be legally pursued by states in lieu of existing employer trip reduction plan mandates unless Congress amends the Clean Air Act to reflect this intent; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States to enact an amendment to the Clean Air Act that will eliminate the provisions mandating an employer trip reduction program in extreme and severe nonattainment areas and, instead, allow states to pursue practical and cost-effective alternatives towards solving their air quality problems; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the Legislature of each of the other states.

RESOLUTION CHAPTER 69

Senate Joint Resolution No. 9—Relative to fuel taxes.

[Filed with Secretary of State August 2, 1995.]

WHEREAS, The objective of the Federal Highway Program has been to facilitate the construction of a modern freeway system that connects all states for an efficient interstate commerce; and

WHEREAS, That objective has been reached and the Interstate System connecting all states is near completion; and

WHEREAS, The states have the responsibility of providing an efficient transportation network for their residents; and

WHEREAS, The states have the means to build and operate a network of transportation systems, including highways, that best serves their needs; and

WHEREAS, The states are best capable of determining their needs and acting on them; and

WHEREAS, The federal role in highway transportation has, over time, usurped the role of the states by taxing fuels used in the states and then distributing the proceeds to the states based on the federal government's perceptions of what is best for the states; and

WHEREAS, The federal government has used the federal gasoline tax revenues to force all states to take actions that are not necessarily appropriate for individual states; and

WHEREAS, The federal distribution, review, and enforcement process wastes billions of dollars on nonproductive activities; and

WHEREAS, Federal mandates that apply uniformly to all 50 states, regardless of their different circumstances, cause the states to waste billions of hard-earned tax dollars on projects, programs, and activities that otherwise the states would not undertake; and

WHEREAS, The new Congress expressed a strong interest in reducing the role of the federal government by allowing the states to manage their own affairs; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the California Legislature respectfully memorializes the President and the Congress of the United States to enact appropriate legislation that would eliminate all federal fuel taxes except for those needed to complete the remaining portions of the Interstate System,

and that the states be given the discretion of levying their own fuel taxes to meet their own individual needs and to spend their money without obtaining approval by the federal bureaucracy; and be it further

Resolved, That the California Legislature is committed to continuing the fuel tax at a level equal to the sum of state and federal fuel tax rates in effect on January 1, 1995, and to continuing the use of the revenues to improve the state's transportation facilities; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the President pro tempore of the United States Senate, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 70

Senate Joint Resolution No. 10—Relative to the federal role in transportation.

[Filed with Secretary of State August 2, 1995.]

WHEREAS, The federal government has attempted to impose national solutions to solve state and regional problems for decades; and

WHEREAS, In that frame of policymaking, the role of the federal government in transportation has increased substantially over the past five decades; and

WHEREAS, Construction of the Interstate Highway System to link all states with a good network of roads was a desirable objective when it was introduced, and that system is very near completion; and

WHEREAS, The federal government has expanded its role and mandates beyond the initial interstate system; and

WHEREAS, The federal government's responsiblities for highway and mass transit are essentially that of tax collector, payor of public funds, "second-guesser," regulator, and reviewer; and

WHEREAS, The state and local governments have continued to be the actual providers of services; and

WHEREAS, The states possess the capability to collect their own taxes and formulate their own expenditure priorities without federal oversight or mandates; and

WHEREAS, The state and local governments have encouraged and contributed to this gradual increase in federal involvement; and

WHEREAS, The new Congress and the President are considering options for reinventing federal government and reducing its

involvement in areas in which federal involvement is not necessary; and

WHEREAS, The effort of the previous Congress was to establish a new national transportation system to add other modes of transportation only for the sake of intermodalism; and

WHEREAS, That action would increase, rather than decrease, the federal role in an area that is not necessary; and

WHEREAS, The federal government can do more for intermodalism by eliminating its role in highway building than by expanding its role into transit; and

WHEREAS, State and local agencies should recognize that by asking for federal money they are asking for federal intervention and that they cannot expect the United States government to furnish funds and not order them to spend those funds in mandated ways, that every federal dollar received is paid to the federal tax collectors by California residents, and that California taxpayers are benefited if the federal role in collecting and distributing taxes is eliminated; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to take appropriate action to reorganize the federal Department of Transportation, eliminate federal programs for highways and transit, and limit the federal role in transportation to national safety standards, aviation, the Coast Guard, and Amtrak; and be it further

Resolved, That federal efforts to develop and establish a national transportation system should be abandoned, and California transportation agencies are urged not to participate in the formation of that system; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, and each Senator and Representative from California in the Congress of the United States and to the United States Secretary of Transportation.

RESOLUTION CHAPTER 71

Senate Concurrent Resolution No. 42—Relative to Joint Rule 51.

[Filed with Secretary of State August 23, 1995.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That Joint Rule 51 is adopted as a Joint Rule of the Senate and Assembly for the 1995–96 Regular Session, to read:

51. (a) The Legislature shall observe the following calendar during the first year of the regular session:

(1) Organizational Recess—The Legislature shall meet on the first Monday in December following the general election to organize. Thereafter, each house shall be in recess from such time as it determines, but not later than the following Friday until the first Monday in January, except when the first Monday is January 1 or January 1 is a Sunday, in which case, the following Wednesday.

(2) Easter Recess—The Legislature shall be in recess from the 10th day prior to Easter until the Monday after Easter.

(3) Summer Recess—The Legislature shall be in recess from July 14 until August 21. This recess shall not commence until the Budget Bill is enacted.

(4) Interim Study Recess—The Legislature shall be in recess from September 15 until the first Monday in January, except when the first Monday is January 1 or January 1 is a Sunday, in which case, the following Wednesday.

(b) The Legislature shall observe the following calendar for the remainder of the legislative session:

(1) Easter Recess—The Legislature shall be in recess from the 10th day prior to Easter until the Monday after Easter.

(2) Summer Recess—The Legislature shall be in recess from July 5 until August 5. This recess shall not commence until the Budget Bill is enacted.

(3) Final Recess—The Legislature shall be in recess on September 1 until adjournment sine die on November 30.

(c) Recesses shall be from the hour of adjournment on the day specified to reconvene at the time designated by the respective houses.

(d) The recesses specified by this rule shall be designated as joint recesses.

RESOLUTION CHAPTER 72

Assembly Concurrent Resolution No. 16—Relative to Flood Preparedness Month.

[Filed with Secretary of State August 29, 1995.]

WHEREAS, In January 1995, California experienced a major flood in 42 counties; and

WHEREAS, Later in March 1995, California experienced yet another flood in 53 counties; and

WHEREAS, Governor Pete Wilson and President Bill Clinton proclaimed a state of emergency in January 1995 and in March 1995 that enabled businesses and residents impacted by the flooding to

qualify for financial assistance from the Federal Emergency Management Agency. The Governor requested help from the federal public assistance program to assist local governments in covering extra costs of emergency response to the storms. Additionally, Governor Wilson issued emergency orders suspending the normal contracting procedures to accelerate the rebuilding of the damaged links to California's State Transportation System; and

WHEREAS, The Governor's Office of Emergency Services responded to flooding throughout California by coordinating all appropriate state agencies and by assisting in the activation of emergency response systems and deploying help to the counties affected. The Governor's Office of Emergency Services and the Federal Emergency Management Agency (FEMA) operated the Teleregistration System to assist and explain to affected victims the various state and federal programs available. The Governor's Office of Emergency Services and representatives of local government teamed up with the U.S. Army Corps of Engineers or the Bureau of Reclamation and worked together to investigate flood damages to public and certain private, nonprofit facilities and to repair damage to property. The Governor's Office of Emergency Services administered the Hazard Mitigation Grant Program. The Governor's Office of Emergency Services and FEMA published a newsletter, "Recovery Times" in cooperation with federal, state, and local government agencies and volunteer organizations to provide timely and accurate information about disaster recovery programs for victims of the flood. The Governor's Office of Emergency Services made available the useful "Flood Recovery Booklet;" and

WHEREAS, The Legislature introduced measures to assist the thousands of Californians whose homes were damaged and whose lives were disrupted by the floods of 1995; and

WHEREAS, The California National Guard provided personnel and equipment to evacuate hundreds of people from their homes; and

WHEREAS, The California Department of Transportation (Caltrans) provided emergency crews to clear roads of debris, mud flows and slides, and supported the California Highway Patrol in traffic control; and

WHEREAS, The California Highway Patrol assisted Caltrans and local law enforcement with traffic control problems on flooded streets and highways and assisted in the evacuations; and

WHEREAS, The State Department of Social Services worked closely with the American Red Cross and other agencies to set up shelters throughout the state, and also awarded Individual and Family Grant Program grants to individuals and families affected by the storms; and

WHEREAS, The Department of Water Resources tracked the flooding throughout California and issued flood advisories, forecasted

river levels, maintained and monitored the state's river levees, and provided critical information to local agencies; and

WHEREAS, The California Conservation Corps took on tough jobs such as debris cleanup and removal, levee repair, sandbagging, and whatever other muscle work needed to be done; and

WHEREAS, The State Department of Health Services monitored water systems and tracked them to ensure the safety of the state's drinking water, and also advised communities when they needed to boil their water before drinking it and provided safe water sources where needed; and

WHEREAS, The Department of Conservation worked with the United States Air Force and NASA to plot flight lines for planes to fly to photograph flooded areas; and

WHEREAS, The Department of Forestry and Fire Protection provided logistics and planning for local agencies and other assistance; and

WHEREAS, The California Contractors' State License Board provided advice in obtaining licensed contractors to assist homeowners in repair or restoration of damaged property; and

WHEREAS, The Department of Insurance was available to give advice on insurance requirements, claims, and problems with settlements; and

WHEREAS, The State Department of Mental Health provided counseling for victims of emotional and mental health problems caused or aggravated by the disaster; and

WHEREAS, The California Employment Development Department administered the federal Disaster Unemployment Assistance benefit payments and provided assistance in finding reemployment and job training; and

WHEREAS, The Legislative Analyst provided information on the programs and funds available to deal with the disasters caused by the storms; and

WHEREAS, President Bill Clinton visited southern and northern California in January to observe the damage and declared a state of emergency in California in January and in March and issued orders to commence federal aid to supplement state and local recovery efforts in the areas struck by the storms; and

WHEREAS, The Secretary of the Department of Housing and Urban Development, Henry Cisneros, visited California in January and surveyed storm and flood damage to public housing; and

WHEREAS, The Federal Emergency Management Agency provided residents with the following wide range of emergency and assistance programs in a timely manner: Temporary Housing Assistance, Individual and Family Grant Programs, Disaster Housing Program, Disaster Mortgage and Rental Assistance Program, Disaster Unemployment Assistance, Crisis Counseling, and the Physical Disaster Loan Program of the Small Business Administration. FEMA offered the National Flood Insurance

Program administered by the Federal Insurance Administration, which makes flood insurance available in communities that adopt and enforce ordinances to reduce flood damage. FEMA distributed information on emergency preparedness to residents regarding important safety tips; and

WHEREAS, The United States Department of Agriculture assisted with the Rural Economic and Community Development Services providing low-interest loans to eligible family farmers and ranchers for the repair or restoration of disaster damaged farm property; and

WHEREAS, The Social Security Administration expedited delivery of checks delayed by the disaster, and in applying for Social Security disability and survivor benefits; and

WHEREAS, The United States Natural Resources Conservation Service administered the Emergency Watershed Protection program, which helps protect life and property after disasters by restoring waterways and watersheds and preventing further flooding and suffering; and

WHEREAS, The United States Department of Transportation's Federal Highway Administration responded to requests for Emergency Relief funds by allocating funds to California to help fund the rebuilding effort of federal-aid highways and bridges damaged by the floods; and

WHEREAS, The Environmental Protection Agency assisted in searching for hazardous spills and removal of health hazards; and

WHEREAS, The American Red Cross and the Voluntary Relief Organizations provided emergency food, clothing, shelter, and medical assistance to affected individuals and families; and

WHEREAS, School yards brimming with homeless disaster victims, hospital parking lots crowded with patients, and collapsed freeways and bridges made it clear to government officials, policymakers, and the public that California must be better prepared for future disasters; and

WHEREAS, A principal means for minimizing the risks of injury and loss of life and damage to property is to make the public aware of all possible flood safety measures and precautions; and

WHEREAS, Heightened awareness may draw public attention to this week in order to encourage the private sector and state and local agencies to initiate activities recognizing the importance of flood preparedness; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the month of January be proclaimed as Flood Preparedness Month, and that all Californians are urged to engage in appropriate flood safety-related activities during that month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, the Director of the Office of

Emergency Services, each county board of supervisors, and each city council in the state.

RESOLUTION CHAPTER 73

Assembly Concurrent Resolution No. 39—Relative to Workplace Fitness Month.

[Filed with Secretary of State August 29, 1995.]

WHEREAS, Numerous studies have shown that workers who get regular exercise have reduced health care costs, reduced absenteeism from work, reduced job turnover, and increased job efficiency, productivity, and satisfaction; and

WHEREAS, A three year study by the Steelcase Company showed that medical claims costs were 55 percent lower for corporate fitness program participants than nonparticipants; and

WHEREAS, General Electric reduced health care costs for members of its fitness program by 38 percent in an 18-month period while nonmembers' health care costs rose 21 percent; and

WHEREAS, There is no question that regular exercise improves a persons ability to perform, reduces stress, and enhances self-image. General Motors found that employees in their physical fitness program had a 50 percent reduction in job grievances, a 50 percent reduction in on-the-job accidents, and a 40 percent reduction in lost time; and

WHEREAS, The Canadian Life Assurance Company reported that 47 percent of participants in a fitness program were more alert, had better rapport with coworkers and supervisors, and enjoyed work more than those who did not participate, and 63 percent of participants indicated that they were more relaxed, more patient, and less tired during the workday; and

WHEREAS, The evidence pointing to the success of fitness programs in improving employee health practices, reducing medical and disability costs, and improving productivity is indisputable. General Electric found that employees who exercised were absent from work 45 percent fewer days than employees who didn't and the Dallas, Texas Police Department reported a 29 percent decrease in sick leave for fitness program participants while nonparticipants' sick leave increased by 5 percent; and

WHEREAS, The California State Legislature supports the promotion of employee fitness programs as a means to reduce workplace absenteeism and employee turnover while bolstering employee morale and commitment; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the month

of October 1995 as Workplace Fitness Month in California to encourage all Californians to participate in regular exercise programs and physical activity for healthier lives and improved work performance and satisfaction; and be it further

Resolved, That the Chief Clerk of the Assembly transmit this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 74

Assembly Concurrent Resolution No. 45—Relative to the Commission on the Status of African-American Males.

[Filed with Secretary of State September 1, 1995.]

WHEREAS, African-American males make up less than 7 percent of the population of California, but are victims of 31 percent of the state's homicides and comprise 38 percent of the state's prison population; and

WHEREAS, Resolution Chapter 3 of the Statutes of 1993 established until January 31, 1995, the 21-member Commission on the Status of African-American Males composed of Members of the Assembly and Senate and professionals in specified fields; and

WHEREAS, The work of the original commission has not been completed and it should continue to function until the work it has started has been completed; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the commission established pursuant to Resolution Chapter 3 of the Statutes of 1993 is hereby created as the Commission on the Status of African-American Males, that the commission shall be composed of the same 21 persons appointed to the former commission, that the chair and vice chair shall remain the same, and that the commission shall continue to act until August 31, 1996 ; and be it further

Resolved, That any vacancy on the commission shall be filled by a person appointed by a quorum of the commission and that 10 members shall constitute a quorum for the purpose of making an appointment; and be it further

Resolved, That the members of the commission shall serve without compensation and that this measure shall be implemented to the extent that private funds are made available to the Assembly Committee on Rules for the purpose of program and administrative costs related to implementation of this measure and that no state funds shall be used to implement this measure, except that the Legislature may provide existing staffing assistance and resources to the commission and the Assembly Committee on Rules may accept

loans of employees of private corporations for providing assistance to the commission; and be it further

Resolved, That it is the policy of the Assembly that it will accept payments or donations from the public for the purposes of this measure in accordance with the requirements of Section 18944.2 of Title 2 of the California Code of Regulations and In re Stone, 3 FPPC Opinions 52; and be it further

Resolved, That the commission shall have the same duties and responsibilities as the former commission and in addition shall have the duty and responsibility of preparing a final report and making policy recommendations to the Legislature and the Governor before August 31, 1996.

RESOLUTION CHAPTER 75

Assembly Concurrent Resolution No. 13—Relative to the Knott Memorial Bridge.

[Filed with Secretary of State September 7, 1995.]

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Penasquitos Creek Bridge on Interstate Highway Route 15 (Bridge No. 57106) is hereby officially designated the Knott Memorial Bridge; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with signing requirements for the state highway system, showing the special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of the resolution to the Director of Transportation.

RESOLUTION CHAPTER 76

Assembly Concurrent Resolution No. 43—Relative to equal status for women.

[Filed with Secretary of State September 7, 1995.]

WHEREAS, For the first 200 years of America's existence, women generally had little voice regarding their political representation, with the exception of a few scattered instances in the prerevolutionary war times where women were allowed to vote in the colonies; and

WHEREAS, The issue of equal status for women began as early as 1634, when Anne Hutchinson, a Calvinist, claimed equality for herself and other women equal to that of the men who ruled the colony. As a result, Ms. Hutchinson was the subject of an inquisition and trial which led to her banishment from the colony; and

WHEREAS, There were a number of notable women in postrevolution America who sought equality for women, including Abigail Adams, who wrote to her husband, John Adams, asking him to remind the Continental Congress to "remember the ladies" when drafting the Constitution; and

WHEREAS, After adoption of the Constitution, women's political role was largely limited to their ability to influence men. Attempts to change this state of affairs were sporadic as when women such as Margaret Brent, a farmer largely responsible for developing the major agricultural commodity "indigo," demanded and failed to get two votes in the Maryland Assembly in 1647, and when the State of New Jersey, in the late 1700's, allowed women to vote for a brief period of time; and

WHEREAS, During the 19th Century, women active in the cause for the abolition of slavery argued for human rights and began to claim those rights for themselves; and

WHEREAS, In 1848, Elizabeth Cady Stanton, Lucretia Mott, and others organized the Seneca Falls Convention in Seneca Falls, New York, the first of many women's rights conventions in the United States; drafted at that first convention was the Declaration of Sentiments, modeled after the Declaration of Independence which declared that, "all men and women are created equal"; and

WHEREAS, Between 1839 and 1860, African American women, such as Sojourner Truth, and white women formed close ties and worked to help each other in the drive for the abolition of slavery and the rights of women, including for some women the right to own private property in full accordance with the right given white men, with this coalition recognizing that the plight of African American women in the United States was the most unbearable in all of society; and

WHEREAS, With the passage of the 14th Amendment to the United States Constitution, and the exclusion of women in its provisions, the fight for women's right to vote was taken from the national platform to the states; and

WHEREAS, After passage of the 13th, 14th, and 15th Amendments, suffragists continued campaigning for the right to vote, through groups such as the National American Women's Suffrage Association (NAWSA), the National Women's Party, and the Congressional Union; and

WHEREAS, Numerous American men, including Aaron A. Sargent of California who introduced women's suffrage legislation in the Congress in the 1870's, also have arranged legislative hearings,

written editorials, circulated petitions, and campaigned for equal voting rights; and

WHEREAS, In 1917 Jeanette Rankin became the first woman elected to the United States Congress, despite the fact that no woman could vote in national elections; and

WHEREAS, The work of the 70-year suffrage movement was victorious when women gained the constitutional right to vote in 1920 as, with the support of more than 2 million women, the 19th Amendment to the United States Constitution was passed, and later, with the passage of the Voting Rights Act of 1965, that right was protected by federal law; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature and the State of California celebrate the 75th anniversary of the passage of the 19th Amendment to the United States Constitution, and recognize the contributions of women to the movements to end slavery, give women the right to vote, and provide equality of opportunity in the United States.

RESOLUTION CHAPTER 77

Assembly Joint Resolution No. 14—Relative to the veterans' hospital facilities at Travis Air Force Base.

[Filed with Secretary of State September 7, 1995.]

WHEREAS, After the closure of the veterans' hospital in Martinez due to damage caused by the 1989 Loma Prieta earthquake, Travis Air Force Base was designated as the best location for construction of a replacement facility; and

WHEREAS, There is a great unmet need for a facility of this type due to the great number of veterans in the catchment area; and

WHEREAS, California veterans have been without an adequate veterans' facility in this area since the destruction of the Martinez facility; and

WHEREAS, Adequate care of our veterans should be the concern of all Americans; and

WHEREAS, No other facility of this type is currently proposed for California; and

WHEREAS, Seven million three hundred thousand dollars has already been funded for the construction of parking and warehouse facilities for the veterans' hospital at Travis Air Force Base; and

WHEREAS, The proposed veterans' hospital at Travis Air Force Base has been subject to various delays in funding and the associated increased costs; and

WHEREAS, Construction costs may continue to rise if delays in funding continue; and

WHEREAS, Funding necessary for construction of the veterans' hospital facilities at Travis Air Force Base has been included in the President's proposed budget for the coming fiscal year; and

WHEREAS, The facility is to be constructed adjacent to the David Grant Medical Center and is expected to serve up to 450,000 veterans; and

WHEREAS, The facility is expected to create 900 new jobs and to generate $90,000,000 in increased revenue for the local area; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to take all steps necessary to ensure the establishment, construction, and retention of the veterans' hospital facilities at Travis Air Force Base; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 78

Assembly Joint Resolution No. 19—Relative to child support enforcement.

[Filed with Secretary of State September 7, 1995.]

WHEREAS, Section 405 of Title 42 of the United States Code mandates that states collect the social security account numbers of parents when birth certificates are issued; and

WHEREAS, Due to their common use as individual identifiers by both the public and private sectors, social security account numbers are essential tools for enforcing child support obligations because many of the child support enforcement actions mandated by federal law cannot be successfully undertaken without the use of social security account numbers; and

WHEREAS, California has made tremendous progress in collecting delinquent child support orders through use of the state's tax collection agency, the Franchise Tax Board, and by refusing to issue or renew licenses if an individual is delinquent in paying his or her child support; and

WHEREAS, These are model child support enforcement programs that have been adopted in several other states; and

WHEREAS, These programs will not continue to be successful without utilization of the obligor's social security account number; and

WHEREAS, A further exception to federal law is needed for documents used to enforce child support orders, specifically, marriage certificates and family law court documents; and

WHEREAS, In many cases, these documents represent the only real opportunity to obtain the social security account numbers of the petitioner and respondent; and

WHEREAS, Social security account numbers are not provided on the marriage certificate at the beginning of the marriage, nor on the dissolution court documents at the end of the marriage, or on documents relating to the establishment of paternity, and consequently, the gathering of this information is entirely dependent on voluntary cooperation of the petitioner and the respondent; and

WHEREAS, as of December 31, 1994, there were 2,304,362 Title IV-D cases, of which 1,126,422 were cases in which either a parent or the assets of a parent had not yet been located; and

WHEREAS, It is essential that federal law be amended to allow the inclusion of social security account numbers on applications for licenses and certificates of marriage and on family law court records , and that federal law be further clarified to permit the continued maintenance of social security account numbers on court and other public agency records where the numbers were collected prior to October 1, 1990, and to permit states to make the social security account numbers available to child support agencies for the exclusive purpose of child support enforcement in accordance with federal and state law; now, therefore, be it

Resolved, by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to amend federal law (42 U.S.C.A. Sec. 405) to allow social security account numbers to be included on applications for licenses and certificates of marriage and on records related to petitions for dissolution of marriage, and to clarify that social security account numbers on court and other public agency records may be maintained if they were collected prior to October 1, 1990, and to permit states to make the social security account numbers available to child support agencies for the exclusive purpose of child support enforcement in accordance with federal and state law; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, and each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 79

Assembly Joint Resolution No. 39—Relative to flood control.

[Filed with Secretary of State September 7, 1995.]

WHEREAS, The Clinton Administration has proposed to end the United States Army Corps of Engineers' involvement in flood control projects in this state; and

WHEREAS, The flooding that arose from the March storms resulted in catastrophic damages to lives and property, including statewide agricultural losses of $363,700,000, following $97,000,000 in losses in January; and

WHEREAS, The recent storms illustrate the need to maintain the proactive and cooperative efforts of the federal government and the state to anticipate flood control needs; and

WHEREAS, The citizens of the state are calling upon the federal government to continue the 80-year presence of the United States Army Corps of Engineers in this state, and allow the corps to continue working successfully with state and local officials in preparing and implementing flood control projects and policies; and

WHEREAS, The federal proposal to withdraw the United States Army Corps of Engineers from active involvement in state flood control efforts, thus ending the working relationship between the federal government and the state regarding flood control, should be reviewed critically; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California recognizes the importance of preserving the existing partnership between the United States Army Corps of Engineers and the state in pursuing flood control projects, and respectfully memorializes the President and Congress of the United States to review and reevaluate the federal proposal to end the involvement of the United States Army Corps of Engineers in flood control projects in the state; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 80

Senate Joint Resolution No. 21—Relative to a nonmotorized facility in the Tahoe Basin.

[Filed with Secretary of State September 8, 1995.]